

United States
Circuit Court of Appeals⁹

For the Ninth Circuit.

NATIONAL SURETY COMPANY, a Corporation,
Plaintiff in Error,

vs.

ISAAC BLUMAUER, W. DEAN HAYS and ORA
J. HAYS, His Wife, T. F. MENTZER and
ELIZABETH E. MENTZER, His Wife,
A. D. CAMPBELL and JESSIE E. CAMP-
BELL, His Wife, DAVID COPPING and
EVA COPPING, His Wife,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
Western District of Washington, Southern Division.

Filed

JUL 3 - 1917

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

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Washington;

CHARLES O. BATES, Esquire, National Realty
Building, Tacoma, Washington;

CHARLES T. PETERSON, Esquire, National
Realty Building, Tacoma, Washington;

Attorneys for Defendants in Error. [1*]

*In the United States District Court for the Western
District of Washington, Southern Division.*

No. 1783.

NATIONAL SURETY COMPANY,

Plaintiff,

vs.

ISAAC BLUMAUER, W. DEAN HAYS and ORA
HAYS, His Wife; T. F. MENTZER and
ELIZABETH E. MENTZER, His Wife; A.
D. CAMPBELL and JESSIE E. CAMP-
BELL, His Wife; and DAVID COPPING
and EVA COPPING, His Wife,

Defendants.

Praeceptum for Transcript of Record.

To the Clerk of the Above-named Court:

You will please prepare and certify to constitute the record on appeal in the above-entitled case type-written copies of the following papers, omitting all captions, excepting on the Amended Complaint, omitting also all verifications, acceptances of service, file-marks and other endorsements, said transcript of record to be forwarded to and filed in the Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, to be printed there according to the rules of said Circuit Court of Appeals:

1. This praecipe.
2. Amended Complaint.
3. Answer of A. D. Campbell and wife.
4. Second Amended Answer of T. F. Mentzer and Others to Amended Complaint.
5. Reply to Answer of A. D. Campbell and Wife.
6. Reply to Second Amended Answer of T. F. Mentzer and Others.
7. Judgment.
8. All orders Extending Time.
9. Bill of Exceptions and Statement of Facts.
10. Petition for Writ of Error.
11. Assignment of Errors.
12. Order Allowing Writ of Error.
13. Bond on Writ of Error. [2]
14. Stipulation Regarding Transcript.
15. Stipulation as to Original Exhibits.

16. Order Directing Original Exhibits to be Forwarded to Circuit Court of Appeals.

C. B. WHITE,

FLETCHER & EVANS,

Attorneys for Plaintiff.

(Filed March 29, 1917.) [3]

*In the District Court of the United States for the
Western District of Washington, Southern Division.*

No. 1783.

NATIONAL SURETY COMPANY,

Plaintiff,

vs.

ISAAC BLUMAUER, W. DEAN HAYS and ORA
HAYS, His Wife; T. F. MENTZER and
ELIZABETH E. MENTZER, His Wife; A.
D. CAMPBELL and JESSIE E. CAMP-
BELL, His Wife; and DAVID COPPING
and EVA COPPING, His Wife,

Defendants.

Amended Complaint.

Comes now the *above plaintiff above* and for cause of action against the defendants and each of them in this its amended complaint complains and alleges:

I.

That the plaintiff is a corporation duly organized and incorporated and existing under and by virtue of the laws of the State of New York and its principal place of business is in New York City in the said State of New York, and that said plaintiff is a

citizen and resident of the State of New York and is duly qualified and licensed to transact a general surety business within the State of Washington and has fully complied with the laws of the State of Washington in that regard.

II.

That Isaac Blumauer, T. F. Mentzer and Elizabeth E. Mentzer, his wife; W. Dean Hays and Ora Hays, his wife; A. D. Campbell and Jessie E. Campbell, his wife, and David Copping and Eva Copping, his wife, were and each of them now is a citizen of the State of Washington, and a resident in the Southern Division of Washington. [4]

III.

That on or prior to the 22d day of June, 1914, and on and prior to the 22d day of June, 1911, the State Bank of Tenino was a corporation organized and existing under and by virtue of the laws of the State of Washington and duly authorized to engage in and did duly engage in and was at the time above-mentioned actually engaged in the banking business in the city of Tenino, Thurston County, Washington.

IV.

That on and immediately prior to the 22d day of June, 1911, and from that on continuously and after June 22d, 1914, said defendants Isaac Blumauer, T. F. Mentzer, A. D. Campbell and W. Dean Hays, each acting for and on behalf of himself and the community composed of himself and wife, desired to secure the deposit in the State Bank of Tenino of a certain sum of money belonging to Thurston County, Washington, in the possession of the County Treas-

urer of said Thurston County, Washington.

V.

That in order to secure the deposit in said State Bank of Tenino of said funds, by the county treasurer of Thurston County, it became necessary for said State Bank of Tenino to furnish a bond as provided by law conditioned for payment to said county treasurer of any sum deposited by him in the State Bank of Tenino upon demand being made therefor.

VI.

That on or about the 19th day of June, 1911, the officers and directors of said State Bank of Tenino applied to the National Surety Company, plaintiff herein, for a bond in the sum of Five Thousand (\$5,000) Dollars to secure the repayment to said county treasurer of Thurston County, Washington, for any sum deposited by him in the said State Bank of Tenino and that on or about the 22d [5] day of June, 1911, the said State Bank of Tenino, as principal, and the National Surety Company, as surety, executed and delivered a bond conditioned according to law, a true and correct copy of which bond is hereto attached and marked Exhibit "A" to the same effect as if specifically set forth in this paragraph.

VII.

That as a part of the transaction heretofore set forth in paragraph VI hereof and in order to induce the plaintiff herein to execute said bond mentioned, the defendants Isaac Blumauer, W. Dean Hays, A. D. Campbell, T. F. Mentzer and David Copping, each acting for himself and the community

composed of himself and wife, agreed to execute and thereupon voluntarily of his own free will and accord did make, execute and deliver to the plaintiff herein a certain agreement and contract of indemnity to indemnify and keep indemnified and hold harmless the said plaintiff, the National Surety Company, from all demand, liability, loss, damages of whatsoever kind or nature, etc., which said plaintiff should incur by reason of having executed and given the bond heretofore referred to in paragraph VI hereof, or the alteration, change, modification, amendment, limitation, extension or renewal thereof, or the substitution of other or new obligations in its place or in lieu thereof, a copy of which said agreement and indemnity contract is hereto attached and marked Exhibit "B" to the same effect as if specifically set forth in this paragraph.

VIII.

That on or about the 22d day of June, 1914, the State Bank of Tenino, acting by and through the defendants, Isaac Blumauer and W. Dean Hays, its president and cashier, respectively, requested the plaintiff herein that said bond, Exhibit "A," be renewed, and said plaintiff acting on said application and relying solely and wholly upon the defendants' agreement and contract of indemnity, [6] Exhibit "B," did execute the bond for Five Thousand (\$5,000) Dollars to secure the repayment of said county treasurer of Thurston County, Washington, of any sum deposited by him in the said State Bank of Tenino, all according to the law in the premises, said county treasurer having had county funds de-

posited in said State Bank of Tenino continuously from June 22d, 1911, until September 19, 1914, a copy of which bond is hereto attached and marked Exhibit "C" to the same effect as if specifically set forth in this paragraph.

IX.

That on or about September 19th, 1914, while the obligations heretofore referred to in paragraphs VII and VIII hereof remained in full force and effect, the said State Bank of Tenino closed its doors and ceased longer to transact the banking business in the State of Washington and thereafter on or about October 5th, 1914, Ray A. Langley was duly appointed receiver for said State Bank of Tenino and at all times since that date has been and now is the duly qualified and acting receiver for said bank.

X.

That the Chicago Bonding & Surety Company furnished a bond to the said State Bank of Tenino conditioned for the repayment to the said county treasurer of Thurston County, Washington, all the funds deposited in said State Bank of Tenino.

XI.

That on September 19th, 1914, the county treasurer of Thurston County, Washington, had on deposit in the said State Bank of Tenino the sum of Twelve Thousand Eight Hundred Twenty-three and 58/100 (\$12,823.58) Dollars.

XII.

That after the appointment of the receiver for said State [7] Bank of Tenino, demand was duly and regularly made upon the said State Bank of

Tenino and upon the plaintiff as surety on said depository bond for the payment to the said county of one-third of the sum on deposit by the county treasurer of Thurston County, Washington, in the said State Bank of Tenino on September 19th, 1914, together with interest on the average daily balance, Thirteen Thousand Two Hundred Two and 96/100 (\$13,202.96) Dollars at the rate of two per cent per annum from August 31st, 1914, up to and including September 22d, 1914.

XIII.

That after notice and demand upon the plaintiff herein for the payment of said sum the plaintiff made demand upon the defendants that they comply with the treasurer's demand, the said plaintiff's demand being made by letter to each of said defendants.

XIV.

That the defendants and each of them failed and neglected to comply with the treasurer's demand or said plaintiff's demand and thereafter on December 30th, 1914, the plaintiff herein was compelled to pay and did pay to the county treasurer of Thurston County, Washington, the sum of Four Thousand Three Hundred Twenty-eight and 77/100 (\$4,328.77) Dollars, which was the plaintiff's one-third under said bond, Exhibit "C," together with interest thereon at the rate of 2% per annum from August 31st, 1914, to September 21st, 1914, and then at the rate of 6% per annum from September 21st, 1914, until date of payment.

- XV.

That in addition to the payment to said county treasurer of Thurston County, Washington, of the sum heretofore mentioned, in paragraph XIV hereof, the plaintiff has sustained and incurred costs and expenses in consequence of its having executed said bond [8] and costs and expenses incurred in investigating claim against said bond in the sum of Fourteen (\$14) Dollars.

XVI.

That no part of said sum mentioned herein or any part thereof having been paid by the defendants herein or any of them, although demand has been made therefor.

WHEREFORE, the plaintiff, the National Surety Company, prays for judgment and decree of the Honorable Court against the defendants Isaac Blumauer, A. D. Campbell and Jessie E. Campbell, his wife; W. Dean Hays and Ora Hays, his wife; T. F. Mentzer and Elizabeth E. Mentzer, his wife, and David Copping and Eva Copping, his wife, in the sum of Four Thousand Three Hundred Twenty-eight and 77/100 (\$4,328.77) Dollars, together with interest thereon at the rate of 6% per annum from December 30th, 1914; together with judgment and decree for the further sum of Fourteen (\$14) Dollars, and also for all costs, expenses and attorney's fees herein and for such other and further relief as the Honorable Court shall deem just and equitable in the premises.

C. B. WHITE,
Attorney for Plaintiff.

Exhibit "A" to Amended Complaint—Depository Bond, June 22, 1911, Between State Bank of Tenino and National Surety Company.

KNOW ALL MEN BY THESE PRESENTS, That we, THE STATE BANK OF TENINO, of Tenino, Washington, as principal, and the National Surety Company, a corporation of the State of New York, as surety, are held and firmly bound unto Robert Marr, individually and as County Treasurer of the County of Thurston, State of Washington, in the full and just sum of Five Thousand (\$5,000) Dollars, lawful money of the United States for the payment of which well and truly to be made, the said principal and surety *representatively* bind themselves, their and each of their successors and assigns, jointly and severally, firmly by these presents.

SIGNED, SEALED AND DELIVERED at Seattle, Washington, this 22nd day of June, A. D. 1911.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, whereas the said Robert Marr has been elected and has qualified as Treasurer of Thurston County, State of Washington, and as such treasurer, at the [9] special instance and request of the said State Bank of Tenino, has deposited, or may hereafter, from time to time, deposit, and place in charge of the said principal hereinbefore named, certain moneys, checks, etc., for the custody or for the proceeds of the face value of which the said treasurer as such, may be responsible, and

NOW, THEREFORE, if the said principal here-

inbefore named shall in due and ordinary course of business, promptly pay to the said treasurer upon demand and presentation of proper and valid checks therefor, in the usual and ordinary hours of business, all moneys and proceeds of all checks, etc., which have been or shall hereafter be deposited with, transferred to or placed in charge of the said principal, by or on behalf of the said treasurer, and shall keep and hold harmless the above named Robert Marr, individually, and as such treasurer, from all liability, loss and damage which may arise, or accrue against the said treasurer by reason of the deposit or delivery of said funds, checks, etc. or any part thereof as aforesaid, and shall well and truly fulfill and perform any and every duty and obligation arising out of or connected with the deposit, or delivery of funds as aforesaid, by and on behalf of said treasurer, then this obligation to be void; otherwise to be and remain in full force and effect.

PROVIDED, HOWEVER, upon the further following express conditions:

FIRST: That in the event of any default on the part of the principal, written notice thereof with a verified statement of the facts showing such default, and the date thereof, shall within ten (10) days after the knowledge of such default, has been received by the said Robert Marr, or his representatives, be mailed to the surety at its office in New York City.

SECOND: That the surety shall not be liable for any deposits made after any such default shall have come to the knowledge of the said Robert Marr or his representatives:

THIRD: That the said surety shall not be liable hereunder except for the loss of moneys belonging to the said Robert Marr, treasurer, and which shall have been deposited with the aforesaid principal by the said Robert Marr, as treasurer aforesaid, or to his credit as such treasurer.

FOURTH: That no such suit, action or proceeding shall be brought or instituted against the surety upon, or by reason of any default, of the principal after the expiration of sixty (60) days after such default, or, in any event, after the 22nd day of June, 1912.

FIFTH: That the surety shall have the right to terminate its suretyship under this obligation by serving notice of its election so to do upon said "obligee" or his or its lawful representatives, and thereupon the said surety shall be discharged from any and all liability hereunder for any default of the principal after the expiration of thirty days after the service of such notice.

SIXTH: That, if the obligee shall at any time hold concurrently with this bond, or represent to the surety, in any statement to it, that it does or will at any time hold concurrently with this bond, or any other bond or collateral as guarantee of security from or on behalf of the principal, the obligee shall be entitled, in event of loss as hereinbefore stated, to claim hereunder only such proportion of the loss as the penalty of this bond bears to the sum of the penalties [10] of all bonds and amount of collateral carried, or to be carried on the principal's behalf, and in no event shall the surety be liable for

any sum in excess of the penalty of this bond.

STATE BANK OF TENINO,

By _____,
President.

Attest: By _____,
Cashier.

Exhibit "B" to Amended Complaint — Indemnity Agreement, June 22, 1911, Between Isaac Blumauer et al. and National Surety Company.

F. 10 5-09-5m

Indemnity Contract for Bond
No. _____

NATIONAL SURETY COMPANY.

THIS AGREEMENT WITNESSETH, That
Whereas, we the undersigned have requested the
NATIONAL SURETY COMPANY, a corporation
under the laws of the State of New York, (herein-
after called the Company), to sign and execute a
certain bond or undertaking in the penalty of Five
Thousand Dollars (\$5,000.00) in behalf of the State
Bank of Tenino in favor of the Treasurer of Thurs-
ton County, Washington, effective June 22, 1911,
covering deposits of the said Treasurer, in said bank.

.....
.....
.....
reference to which bond or undertaking made for the
purpose of certainty and a copy of which instrument
is or may be hereto attached; and

WHEREAS, The company has signed and exe-
cuted, or is about to sign and execute the said instru-

ment upon condition of the execution thereof and upon the security and indemnity hereby and herein provided.

NOW, THEREFORE, In consideration of the premises of the sum of One Dollar in hand paid to us by the Company, the receipt whereof is hereby acknowledged, we, the undersigned, hereby covenant and agree with the Company, its successors and assigns, in manner following:

FIRST: That we *will in* cash to the Company as its principal in the City of New York, or to such agent or representative of the Company as the Company may in writing designate, the sum of Twenty-five and no/100 (\$25.00) Dollars, which is agreed by the undersigned to be the Company's compensation for the accommodation afforded the undersigned by the execution of said instrument by the Company, said sum to be paid to the Company annually in advance on the Twenty-second day of June.....

.....
.....
in each and every year during the time the Company shall be and continue liable upon said instrument and, until the Company shall have been fully discharged and released from any and all liability upon the said instrument, and all matters arising therefrom, and until there shall have [11] been furnished to the Company, at its principal offices in the City of New York, due and satisfactory proof by evidence legally competent, of such discharge and release.

SECOND: That we will at all times indemnify the Company, and hold and save it harmless from and against any and all demands, liabilities, loss, damage

or expense *or* whatsoever kind or nature, including counsel and attorney's fees, which it shall at any time sustain or incur by reason, or in consequence of having executed the said *instrumental* and that whenever any claim or claims shall have been made upon the Company under the said instrument, if in the judgment of the Company it is determined that such claim or claims should be paid, we covenant, promise and agree to pay over in cash to the Company upon its demand therefor, the amount or amounts of such claim or claims, and if the Company deny liability concerning any claim or claims and suit or suits be brought against the Company, under said instrument to recover the amount of said claim or claims, or any other proceedings be taken thereon involving the Company, whether the suits and proceedings be against the principal named in the said instrument, and the Company jointly, or against the Company alone, we covenant and agree to defend said suits and proceedings to a conclusion at our own expense, or to permit the Company, if it so elect, to place the defense of such suits and proceedings in the hands of its own attorneys or counsel, in which latter event we covenant, promise and agree to pay over to the Company upon its demand such sum or sums of money as may be required to retain said attorneys or counsel and to defray the expenses of conducting the defense of said suits and proceedings; and further we covenant and agree to satisfy and discharge any and all judgments recovered against the Company under said instrument as soon as the same shall be entered or docketed unless an appeal be taken and bond or bonds to secure or stay the collection of such

judgment or judgments be procured by the undersigned and filed as required by law, and if final judgment be recovered or entered against the Company after the decision of such appeal, we covenant and agree to forthwith satisfy and discharge every such final judgment without requiring the Company to take any steps whatsoever thereon; and should judgment be entered against the principal in said bond and the Company, or against the Company alone, in either event, should the undersigned not procure an appeal to be taken and furnish bond or bonds to secure, supersede or stay the collection of such judgment, the Company may, if it elect, pay said judgment, whereupon we agree forthwith to repay the Company, the amount of said judgment so paid, together with legal interest thereon from the date of payment to the date of such re-payment; that we will pay over, reimburse and make good to the Company, its successors and assigns, all sums and amounts of money not hereinbefore provided for, which the Company or its representatives shall pay, or cause to be paid, or become liable to pay under its obligations upon said instrument, or as charges and expenses *or* whatsoever kind or nature, including counsel and attorney's fees by reason of the execution thereof, or in connection with any litigation, investigation or other matters connected therewith such payment to be made to the Company as soon as it shall have become liable therefor, whether it shall have paid out said amount or any part thereof, or not.

That in any settlement between us and the Company, the vouchers or other proper evidence showing payment by the Company of any such liability, loss,

damage, or expense, shall be prima facie evidence against us of the fact and amount of our liability to the Company, provided that such payment shall have been made by the Company in good faith, believing that it was liable therefor. [12]

THIRD: That in case of any action at law, suit in equity, or other proceeding be commenced or notice of such action, suit or proceeding be served upon the undersigned, affecting the liability of the Company upon said instrument, or growing out of any matter connected herewith, or on account of which the said instrument was given we will immediately notify the Company at its principal offices in the City of New York.

FOURTH: The Company may at any time hereafter take such steps at it may deem necessary or proper to obtain its release from any and all liability under the said instrument, or under any other instrument within the meaning of Section Fifth hereof, and to secure and further indemnify itself against loss, and all damages and expenses which the Company may sustain or incur or be put to in obtaining such release, or in further securing itself against loss, shall be borne and paid by us.

FIFTH: That no act or omission of the Company in notifying, amending, limiting or extending the instrument so executed by the Company shall in any wise effect our liability hereunder, nor shall we or any of us be released from this obligation by reason thereof; and we agree that the Company may alter, change, or modify, amend, limit or extend said instrument and may execute renewal thereof, or other

and new obligations in its place or in lien thereof, and without notice to us being expressly waived, and in any such case, we and each of us shall be liable to the Company as fully and to the same extent on account of any such altered, changed, modified, limited or extended instrument or such renewals thereof, or other or new obligations in its place or in lieu thereof, whenever and as often as made, as fully as if such instrument were described as length herein.

SIXTH: That it shall not be necessary for the Company to give us or either of us, notice of any act, fact, or information coming to the notice or knowledge of the Company concerning or affecting its rights or liability under any such instrument by it so executed, or our rights or liabilities hereunder, notice of all such being hereby expressly waived.

SEVENTH: That this agreement shall bond not only the undersigned jointly and severally, but also our respective heirs, executors, administrators, successors and assigns (as the case may be), until the Company shall have executed a release under its corporate seal, attested by the signature of its officers proper for the purpose.

EIGHTH: That these covenants as also all collateral securities or indemnity, if any, at any time deposited with or available to the Company concerning any bond or undertaking executed for or at the instance of us, or any of us, at the option of the Company, be available in its behalf and for its benefit and relief as well concerning any or all former and subsequent bonds or undertakings executed for us, or at the instance of us, or any of us, as concerning the bond or undertaking such covenants, collateral

securities or indemnity shall have been made, deposited or given.

NINTH: It is distinctly covenanted and agreed that it is the true and intent meaning of the provisions of this instrument among other things, that immediately upon any default on the part of the principal in said bond in performing any of the obligations thereof, or immediately upon any claim being made upon the Company, the undersigned shall pay over to and deposit with the Company in cash, the full amount of moneys or the equivalent thereof, with accrued interest if any, [13] alleged by the holder of said bond to be in the hands of said principal or the penalty of said bond.

IN WITNESS WHEREOF, We have hereunto set our hands and affixed our seals this 22d day of June, 1911.

ISAAC BLUMAUER, [Seal]

P. O. Address: Tenino, Wash.

T. F. MENTZER. [Seal]

P. O. Address: Tenino, Wash.

W. DEAN HAYS. [Seal]

P. O. Address: Tenino, Wash.

A. D. CAMPBELL.

Tenino, Wash.

DAVID COPPING.

Tenino, Wash.

STATE BANK OF TENINO

ISAAC BLUMAUER,

President.

W. DEAN HAYS,

Cashier.

State of Washington,
County of King,—ss.

On this 22d day of June, 1911, before me personally came Isaac Blumauer, T. F. Mentzer, W. Dean Hays, A. D. Campbell and David Copping, to me known and known to me to be the individuals described in and who executed the foregoing agreement and each acknowledged that he executed the same.

GEO. W. ALLEN,

Notary Public in and for the State of Washington,
Residing at Seattle.

State of Washington,
County of King,—ss.

On the 24th day of June, in the year 1911, before me personally came Isaac Blumauer, to me known, who being by me duly sworn, did depose and say: that he resides in Tenino, Wash. * * * is the President of the State Bank of Tenino, the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation, that the seal affixed to the said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of the said corporation and that he signed his name to the said instrument by like order.

J. F. CANORE,

Notary Public in and for the State of Washington,
Residing at Tenino.

State of ———,
County of ———,—ss.

Before me personally came ——— to me known and

known to me to be a member of the firm of — described in and who executed the foregoing agreement and acknowledged that he executed the same as and for the act and deed * * * said firm. [14]

Exhibit "C" to Amended Complaint — Depository Bond.

DEPOSITORY BOND.

No. ———. Amount \$5,000.00

KNOW ALL MEN BY THESE PRESENTS,
That the State Bank of Tenino as Principal, and National Surety Company, a corporation organized and existing under and by virtue of the laws of the State of New York, and authorized to transact business in the State of Washington, as surety, are firmly held and bound unto W. H. Britt, Treasurer of the County of Thurston, State of Washington, ——— in the sum of Five Thousand and no/100 Dollars (\$5,000.00) for the payment of which, well and truly to be made we hereby bind ourselves, our and each of our successors and assigns, jointly, firmly by these presents.

Dated this 22d day of June, A. D. 1914.

WHEREAS, the said *Princiapl*, State Bank of Tenino, has been designated by W. H. Britt, Treasurer of Thurston County, as a Depository of the current funds in the hands or possession of the said Treasurer, W. H. Britt, to be deposited in the said Bank; the amount whereof shall be subject to withdrawals, or diminution by said Treasurer, as the requirements of said County shall demand, and which amount may be increased or decreased as the said Treasurer may determine and

WHEREAS, the said Bank, in consideration of such deposit and of the privilege of keeping same, has agreed to pay the County of Thurston, State of Washington, interest on said sum upon the average daily balance the said Bank shall have on deposit for the month, or any fraction thereof next preceding the crediting of said interest, which interest shall be computed and credited to the account of W. H. Britt, Treasurer of said County *or* Thurston, State of Washington and shall become thenceforth a part of such deposit.

NOW, THEREFORE, if the said State Bank of Tenino shall at the beginning of every month render to the Treasurer of the County of Thurston, State of Washington, a statement showing the daily balance of such County moneys held by it during the month next preceding and the interest thereon, and how the same has been credited, and shall well and truly keep all such sums of money so deposited, or to be deposited, as aforesaid, and the interest thereon, subject at all times to the check and order of W. H. Britt, Treasurer as aforesaid, and shall pay over the same or any part thereof, upon the check or written demand of said Treasurer, or to his successor in office, and shall calculate, credit and pay such interest, as aforesaid, and shall in all respects save and keep the said County, and the County Treasurer of the said County, harmless and indemnified for and by reason of the making of said deposit or deposits, and shall in all respects comply with House Bill No. 90, entitled "An act regulating the keeping and deposit of public funds in Banks by the several Treas-

urers of the State of Washington'' passed by the Legislature of the State of Washington at its tenth regular session, in the year 1907, then this obligation shall be void and of no effect, otherwise to be and remain in full force and effect.

PROVIDED:

1. That the National Surety Company, Surety on said bond, [15] shall have the right to terminate its liability under this obligation by serving notice of its election so to do upon the said Treasurer, and the said Surety shall be discharged from any and all liability hereunder for any default of the said State Bank of Tenino, Principal occurring after the expiration of thirty (30) days after the service of such notice.

2. The Surety shall only be liable for such proportion of the total loss or damage sustained by said Obligee, by reason of any default of the Principal embraced within the terms of this bond, as the penalty of this bond shall bear to the total sum of all bonds and securities which may be given to secure the deposits above referred to, and in no event shall the Surety hereunder be liable for any sum in excess of the penalty of this bond.

By _____,
President.

By _____,
Attest: _____
Cashier.

Attest: _____

**Answer of A. D. Campbell and Jessie E. Campbell,
His Wife.**

Come now the defendants A. D. Campbell and Jessie E. Campbell (pleaded herein as "Jane Doe" Campbell), and for answer to the plaintiff's complaint herein, admit, deny and allege:

I.

Defendants deny knowledge or information sufficient to form a belief as to the allegations made and contained in paragraph I of the plaintiff's complaint and therefore deny the same.

II.

Defendants admit paragraph II thereof.

III.

Defendants admit paragraph III thereof.

IV.

Defendants deny that on and immediately prior to the 22d day of June, 1911, and from then on continuously and after June 22, 1914, that A. D. Campbell, acting for and on behalf of himself and his co-defendant Jessie E. Campbell, in conjunction with other officers, stockholders and directors of the said State Bank of Tenino, desired to secure the deposit of certain moneys belonging to Thurston County, Washington, and in the possession of the County Treasurer of Thurston County, Washington.

V.

Defendants deny knowledge or information sufficient to form a belief as to the matters and things set forth in paragraph V thereof and therefore deny the same. [17]

VI.

Defendants admit the matters and things alleged and set forth in paragraph VI thereof.

VII.

Answering paragraph VII thereof defendants deny as their part of the transaction heretofore set forth, in paragraph VI of the plaintiff's complaint, that in order to induce the plaintiff to execute the bond therein mentioned, the defendant A. D. Campbell acting for himself and his co-defendant Jessie E. Campbell, in conjunction with Isaac Blumauer, W. Dean Hays, T. F. Mentzer, and David Copping, agreed to execute, and thereupon did execute and deliver to the plaintiff the certain contract of indemnity, Exhibit "B," referred to in the said paragraph, but the defendants admit that the defendant A. D. Campbell, with the other persons mentioned in the said paragraph VII, did execute the said agreement, Exhibit "B."

VIII.

Defendants deny knowledge or information sufficient to form a belief as to whether or not, on the 22d day of June, 1914, the State Bank of Tenino, by and through the defendants Isaac Blumauer and W. Dean Hays, its president and cashier, respectively, requested the plaintiff herein that the said bond, Exhibit "A," be renewed, and therefore deny the same; defendants deny that acting on the said obligation and relying sole and wholly upon the defendant's agreement and contract of indemnity Exhibit "B," that the plaintiff did execute the bond requested for Five Thousand (5,000) Dollars to se-

cure the repayment to the County Treasurer of Thurston County, Washington, of any sums deposited by him in the said State Bank of Tenino, or any sum deposited in the said State Bank of Tenino as in said paragraph alleged. [18]

IX.

Answering paragraph IX thereof defendant admits that the State Bank of Tenino closed its doors and ceased longer to transact business on the 19th day of September, 1914, and that on or about October 5th, 1914, Roy A. Langley was appointed and thereafter qualified, and at all times since has been the qualified and acting receiver thereof and denies each and every other allegation in said paragraph contained.

X.

Defendants admit the allegation made and contained in paragraph X thereof.

XI.

Defendants deny knowledge or information sufficient to form a belief as to the matters and things set forth in paragraph XI thereof and therefore deny the same.

XII.

Defendants deny knowledge or information sufficient to form a belief as to the matters and things alleged in and set forth in paragraph XII thereof and therefore deny the same.

XIII.

Answering paragraph XIII thereof the defendants admit that the plaintiff herein made demand upon the defendants to pay certain moneys to the

treasurer of Thurston County, Washington.

XIV.

Defendants admit that they refused to comply with the said demand as alleged in paragraph XIV of the said complaint and deny knowledge or information sufficient to form a belief as to each and every other allegation in the said paragraph contained and therefore deny the same.

XV.

Defendants deny knowledge or information sufficient to form a belief as to the matters and things set forth in paragraph [19] XV thereof and therefore deny the same.

XVI.

Defendants admit the allegation in paragraph XVI thereof.

And further answering the said complaint, and as a first affirmative defense thereto, defendants allege:

I.

That on the 22d day of June, A. D. 1911, the State Bank of Tenino was a corporation, organized and existing under and by virtue of the laws of the State of Washington engaged in a general banking business in the town of Tenino, in Thurston County, Washington; that on said date one Robert Marr was the duly elected, qualified and acting County Treasurer of Thurston County, Washington.

II.

That on or about the 22d day of June, 1911, the said Robert Marr, as such County Treasurer, had on deposit in the said State Bank of Tenino certain funds, the exact amount thereof the defendants are

at this time unable to state, and that in order to secure the repayment of the said moneys by the said State Bank of Tenino to the said Robert Marr, the plaintiff herein executed its certain depository bond or undertaking in writing, a copy of which is attached to plaintiff's complaint herein, marked Exhibit "A" and made a part hereof by reference.

III.

That the term of office of the said Robert Marr as County Treasurer of Thurston County, Washington, expired and terminated under the laws of the State of Washington, on the 8th day of January, A. D. 1913, and the said depository bond, Exhibit "A," by its terms and conditions also expired and terminated on the said 8th day of January, A. D. 1913.
[20]

IV.

That to indemnify the said plaintiff because of any loss or damage by reason of or in consequence of its executing the said depository bond, Exhibit "A" to the said Robert Marr, individually and as County Treasurer of Thurston County, Washington, and not otherwise, the defendants A. D. Campbell, together with his codefendants Isaac Blumauer, W. Dean Hays, T. F. Mentzer and David Copping, executed and delivered to the plaintiff their certain agreement and undertaking in writing, a copy of which is attached to the plaintiff's complaint herein, marked Exhibit "B" and made a part thereof.

V.

That the said State Bank of Tenino did, in the due and ordinary course of business promptly pay the

said Robert Marr, County Treasurer, upon demand and presentation of proper and valid checks all moneys and proceeds of all checks etc., which were then or thereafter deposited with, transferred or placed in charge of the said bank by or on behalf of the said Treasurer and kept and held harmless the said Robert Marr individually and as such County Treasurer from all liability, loss and damage by reason of the deposit or delivery of any funds, checks or moneys on behalf of the said Robert Marr to date, and fully performed each and every duty, obligation and condition arising out of or connected with the deposits or delivery of funds to it by or in behalf of the said Robert Marr as such treasurer, and fully performed all the conditions and obligations on it imposed under the terms and conditions of the agreement, Exhibit "A" during the whole of the period covered by it and during the entire duration of the said bond, Exhibit "A," to wit, from the 22d day of June, 1911, until and including the 8th day of January, A. D. 1913. [21]

Defendants further answering the said complaint and as a second affirmative defense thereto, allege:

I.

Defendants hereby reiterate and adopt as though fully set forth herein the allegations made and contained in paragraph I of their first affirmative defense.

II.

Defendants hereby reiterate and adopt as though fully set forth herein the allegations made and con-

tained in paragraph II of their first affirmative defense.

III.

That on or about the 22d day of June, A. D. 1911, the said Robert Marr, as such County Treasurer, had on deposit in the State Bank of Tenino certain funds, the exact amount thereof the defendants are at this time unable to state, and that in order to secure the repayment of the said moneys by the said State Bank of Tenino to the said Robert Marr, the plaintiff herein, executed its certain depository bond or undertaking in writing a copy of which is attached to the plaintiff's complaint, marked Exhibit "A" and made a part thereof by reference.

IV.

Defendants hereby reiterate and adopt the allegations made and contained in paragraph IV of their first affirmative defense herein as though fully set forth herein.

V.

Defendants hereby reiterate and adopt as though fully set forth all of the allegations made and contained in paragraph V of their first affirmative defense.

VI.

That on or about the 29th day of May, A. D. 1914, one [22] W. H. Britt, the duly elected, qualified and acting Treasurer of Thurston County, Washington, and successor of the said Robert Marr, former treasurer, fully released, canceled and discharged the said depository bond Exhibit "A" and fully released and relieved and discharged the plaintiff of all liabil-

ity thereunder, and surrendered up and delivered the said bond to the plaintiff, and the defendant was thenceforth and thereafter and at all times since has been fully discharged and relieved of all liability thereon or responsibility thereunder.

VII.

That at the time of the cancellation and discharge of plaintiff's liability on the said bond and the surrendering up and delivery thereof, and at all times prior thereto the said State Bank of Tenino had fully performed all and singular the terms and conditions of the said bond and every part thereof on its part to be performed.

VIII.

That by reason of the cancellation and discharge of the plaintiff from further liability on the said depository bond and by reason of the surrendering up and delivery thereof to the plaintiff as herein alleged, the said indemnity agreement or undertaking Exhibit "B" was fully released, satisfied and discharged.

WHEREFORE defendants having fully answered the said complaint, pray that the plaintiff's complaint may be dismissed and that they may go hence with their costs.

BATES, PEER & PETERSON,
1107 National Realty Building,
Tacoma, Washington,

Attorneys for Defendants, A. D. Campbell and Jessie
E. Campbell.

(Filed May 24, 1915.) [23]

Second Amended Answer of T. F. Mentzer and Elizabeth E. Mentzer, His Wife, and Eva Copping, Wife of David Copping, Deceased, to the Amended Complaint.

Come now the defendants, T. F. Mentzer and Elizabeth E. Mentzer, his wife, and Eva Copping, wife of the said David Copping (the said David Copping having departed this life subsequent to the commencement of this action, and his wife Eva Copping, being his sole devisee, and having succeeded to all of his rights), and for a second amended answer to the amended complaint herein deny, admit and allege as follows, to wit:

I.

These answering defendants admit the allegations of paragraph I of the amended complaint.

II.

These answering defendants admit paragraph II thereof.

III.

These answering defendants admit paragraph III of the said amended complaint.

IV.

These answering defendants deny that on and immediately prior to the 22d day of June, 1911, and from thence on continuously to and after June 22, 1914, the defendant T. F. Mentzer, acting on behalf of himself and his codefendant Elizabeth E. Mentzer, and in conjunction with other officers and stockholders and directors of the said State Bank of Tenino desired to secure the deposit of certain moneys be-

longing to the treasurer of Thurston County, Washington, and allege that the said defendants T. F. Mentzer ceased to be a director of the said State Bank of Tenino on the 1st day of May, 1912, and has not been a director thereof since. [24]

V.

These answering defendants admit the allegations of paragraph V of the amended complaint.

VI.

These answering defendants admit the allegations in paragraph VI of the said complaint, except that they deny that the application for the said bond was for a bond to run to the County Treasurer of Thurston County, Washington, and allege that the said bond was applied for to run to Robert Marr as County Treasurer of Thurston County, Washington, and to none other.

VII.

Answering paragraph VII of the said complaint, these answering defendants deny as their part of the transaction heretofore set forth in paragraph VI of the amended complaint herein and as admitted in paragraph VI of the answer herein that in order to induce the plaintiff to execute the bond therein mentioned, the defendant T. F. Mentzer, acting for himself and his codefendant, Elizabeth E. Mentzer, and the defendant David Copping, acting for himself and his codefendant Eva Copping, in connection with Isaac Blumauer, W. Dean Hays, and A. D. Campbell, agreed to execute, and thereupon did execute and deliver to the plaintiff a certain contract of indemnity, Exhibit "B," referred to in the said

paragraph, or the alterations, changes, modifications, amendments, limitations, extensions, or renewals thereof, or the substitution of other or new obligations in the place or in lieu thereof; but these answering defendants admit that the defendants T. F. Mentzer and David Copping, with the other persons named in the said paragraph of said complaint, did execute said Exhibit "B."

VIII.

These answering defendants deny any knowledge or information sufficient to form a belief as to whether or not on the said 22d day of June, 1914, the State Bank of Tenino, by and through the defendants [25] Isaac Blumauer and W. Dean Hays, its president and cashier, respectively, requested the plaintiff herein that the said bond Exhibit "A," be renewed, and therefore deny the same. These answering defendants deny that acting on the said application and relying solely and wholly or at all on the defendant's agreement and contract of indemnity Exhibit "B," that the plaintiff did execute the bond for Five Thousand (5,000) Dollars, to secure the repayment to the County Treasurer of Thurston County, Washington, of any sum deposited by him in the said State Bank of Tenino, or any sum deposited in the said State Bank of Tenino, as the said paragraph alleges, and deny that either Robert Marr individually, or the Treasurer of Thurston County, Washington, or any other person, as treasurer of Thurston County, Washington, had county funds, or any funds on deposit in the said State Bank of

Tenino, continuously from June 22, 1911, until September 19, 1914.

IX.

Answering paragraph IX thereof these answering defendants admit that the State Bank of Tenino closed its doors and ceased longer to transact business on the 19th day of September, 1914, and that on or about the 5th day of October, 1914, Ray A. Langley was appointed and thereafter qualified and at all times since has been the qualified and acting receiver thereof, and denies each and every other allegation in the said paragraph contained.

X.

These answering defendants admit the allegations made and contained in paragraph X of the said complaint.

XI.

These answering defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the matters and things set forth in paragraph XI of the said complaint, and therefore deny the same. [26]

XII.

These answering defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the matters and things set forth in paragraph XII of the said complaint, and therefore deny the allegation that the County Treasurer of Thurston County had on deposit in the State Bank of Tenino \$13,202.96 on said September 19, 1914, or any other sum.

XIII.

Answering paragraph XIII of the said complaint these answering defendants herein admit that plaintiff made demand on defendants T. F. Mentzer and David Copping to pay certain moneys to the treasurer of Thurston County, Washington.

XIV.

These answering defendants admit that they refused to comply with the said demand as alleged in paragraph XIV of said complaint, and deny knowledge or information sufficient to form a belief as to the truth or falsity of each and every other allegation in said paragraph contained, and therefore deny the same.

XV.

These answering defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the matters and things set forth in paragraph XV of the said complaint and therefore deny the same.

XVI.

These answering defendants admit the allegations of paragraph XVI of the said complaint.

XVII.

That subsequent to the commencement of the above-entitled cause the defendant David Copping departed this life; that no children had ever been born to the said David Copping and Eva Copping, and that he died intestate and all of the moneys and property owned and [27] left by the said deceased at the time of his death was acquired during the marriage of the said deceased David Copping, and his wife

Eva Copping, and that the defendant Eva Copping, became, as your defendants are informed and believe, the sole and only owner of all of the said community property of the said deceased and herself and succeeded to all of his obligations.

For a further and first affirmative defense, these answering defendants allege:

I.

That on the 22d day of June, A. D. 1911, the State Bank of Tenino was a corporation organized and existing under the laws of the State of Washington, and engaged in a general banking business at Tenino, in Thurston County, State of Washington, and that on the said day one Robert Marr was the duly elected, qualified and acting treasurer of Thurston County, Washington.

II.

That on or about the 22d day of June, 1911, the said Robert Marr, as such treasurer, had a deposit in the said State Bank of Tenino certain funds, the exact amount thereof the defendants are at this time unable to state, and that in order to secure the repayment of the said money by the said State Bank of Tenino to the said Robert Marr, the plaintiff herein executed a certain depositary bond or undertaking in writing a copy of which is attached to the plaintiff's Complaint herein, marked Exhibit "A," and made a part hereof by reference.

III.

That the term of office of the said Robert Marr as County Treasurer of Thurston County, Washington, expired and terminated under the laws of the State

of Washington, on the 8th day of January, A. D. 1913, and that the said depositary bond Exhibit "A," by its terms and conditions, expired and terminated on the said 8th day of January, 1913. [28]

IV.

That to indemnify the said plaintiff because of any loss or damage by reason or in consequence of its executing the said depositary bond, Exhibit "A," to the said Robert Marr, individually and as County Treasurer of Thurston County, Washington, and not otherwise, the defendants T. F. Mentzer and David Copping, together with their codefendants Isaac Blumauer, W. Dean Hays, and A. D. Campbell executed and delivered to the plaintiff their certain agreement or undertaking in writing, a copy of which is attached to the plaintiff's complaint herein, marked Exhibit "B" and made a part thereof.

V.

That the said State Bank of Tenino did and in the due and ordinary course of business promptly pay the said Robert Marr, County Treasurer, upon demand and proper presentation of proper and valid checks all moneys and proceeds of all checks, etc., which were then or thereafter deposited with, transferred to or placed in charge of said bank, by or on behalf of the said treasurer and kept and held harmless the said Robert Marr, individually and as such County Treasurer from all liability, loss and damage by reason of the deposit or delivery of any funds, checks or moneys on behalf of said Robert Marr to date, and fully performed each and every duty, obligation and condition arising out of or connected with

the deposit or delivery of funds to it by or on behalf of the said Robert Marr as such treasurer and fully performed all of the conditions and obligations on it imposed, under the terms of and conditions of the agreement, Exhibit "A," during the whole of the period covered by it, and during the entire duration of the said bond, Exhibit "A," to wit, from the 22d day of June, 1911, until and including the 8th day of January, 1913, and that by reason of the matters and things alleged in this affirmative defense, all liabilities and obligations of these answering defendants to the plaintiff ceased, and determined by reason of the expiration of the [29] said bond, and the faithful compliance with the conditions thereof by the said State Bank of Tenino.

FOR A FURTHER, SEPARATE AND SECOND AFFIRMATIVE DEFENSE, these answering defendants allege:

I.

That on the 22d day of June, 1911, the State Bank of Tenino was a corporation organized and existing under the laws of the State of Washington, and engaged in a general banking business at Tenino, Thurston County, State of Washington, and that on the said day one Robert Marr was the duly elected qualified and acting treasurer of Thurston County, Washington.

II.

That on or about the 22d day of June, 1911, the said Robert Marr, as such treasurer, had a deposit in the said State Bank of Tenino of certain funds, the exact amount thereof the defendants are at this

time unable to state, and that in order to secure the repayment of the said money by the said State Bank of Tenino to the said Robert Marr, the plaintiff herein executed a certain depositary bond or undertaking in writing, a copy of which is attached to the plaintiff's complaint herein, marked Exhibit "A" and made a part hereof by reference.

III.

That the term of office of the said Robert Marr, as county treasurer of Thurston County, Washington, expired and terminated under the laws of the State of Washington, on the 8th day of January, A. D. 1913, and that the said depositary bond Exhibit "A" by its terms and conditions expired and terminated on the said 8th day of January, 1913.

IV.

That to indemnify the plaintiff because of any loss or damage by reason or in consequence of its executing the said depositary bond Exhibit "A," to the said Robert Marr, individually, and as county [30] treasurer of Thurston County, Washington, and not otherwise, the defendants T. F. Mentzer and David Copping, together with their codefendants, Isaac Blumauer, W. Dean Hays, and A. D. Campbell, executed and delivered to the plaintiff their certain agreement or undertaking in writing, a copy of which is attached to the plaintiff's Complaint herein, marked Exhibit "B" and made a part thereof.

V.

That the said State Bank of Tenino did and in the due and ordinary course of business promptly pay to the said Robert Marr, County Treasurer, upon de-

mand and presentation of proper and valid checks, all moneys and proceeds of all checks, etc., which were then or thereafter deposited with, transferred to or placed in charge of said bank, by or on behalf of the said treasurer and kept and held harmless the said Robert Marr, individually and as such County Treasurer from all liability, loss and damage by reason of the deposit or delivery of any money, funds, checks, or moneys on behalf of said Robert Marr, to date, and fully performed each and every duty, obligation and condition arising out of or connected with the deposit or delivery of funds to it by or on behalf of the said Robert Marr as such Treasurer and fully performed all of the conditions and obligations on it imposed under the terms and conditions of the agreement Exhibit "A" during the whole of the period covered by it, and during the entire duration of the said bond, Exhibit "A," to wit, from the 22d day of June, 1911, until and including the 8th day of January, 1913, and that by reason of the matters and things alleged in this second affirmative defense, all liabilities and obligations of these answering defendants to the plaintiff ceased and determined by reason of the expiration of the said bond, and the faithful compliance with the conditions thereof by the said State Bank of Tenino.

VI.

That on or about the 29th day of May, A. D. 1914, one [31] W. H. Britt, the duly elected, qualified and acting County Treasurer of Thurston County, Washington, and successor of the said Robert Marr, former treasurer, fully released, cancelled and dis-

charged the said depository bond, Exhibit "A" and fully released and relieved and discharged the said plaintiff of all liability thereunder and surrendered up and delivered the said bond to the plaintiff, and the defendants were therefor and thereafter, and at all times since have been fully discharged and released of all liability thereon or responsibility thereunder.

VII.

That at the time of the cancellation and discharge of plaintiff's liability on the said bond and the surrendering and delivering thereof, and at all times prior thereto, the said State Bank of Tenino had fully performed all and singular the terms and conditions of the said bond and every part thereof on its part to be performed.

VIII.

That by reason of the cancellation and discharge of the plaintiff from further liability on the said depository bond and by reason of the surrendering up and delivery thereof to the plaintiff as herein alleged, the said indemnity agreement or undertaking, Exhibit "B," was fully released, set aside and discharged.

WHEREFORE the defendants pray that the plaintiff go hence without day and take nothing, and these answering defendants may be dismissed and that they have their costs and disbursements of suit herein, and for such other and further relief as to

the court may seem meet in the premises.

Attorneys for Defendants T. F. Mentzer, Elizabeth
E. Mentzer, David Copping and Eva Copping.
(Filed May 24, 1916.) [32]

**Reply to the Answer of Defendants A. D. Campbell
and Jessie Campbell, His Wife.**

Comes now the plaintiff and replying to the answer of A. D. Campbell and Jessie Campbell his wife, admits, denies and alleges as follows:

REPLY TO FIRST AFFIRMATIVE DEFENSE.

I.

Plaintiff admits the allegations contained in paragraph I.

II.

Plaintiff admits that the State Bank of Tenino as principal, and plaintiff as surety executed and delivered a certain depository bond, a copy of which is attached to plaintiff's amended complaint, marked Exhibit "A," but plaintiff denies the other allegations, matters and things contained and set forth in paragraph II.

III.

Plaintiff admits that the term of office of Robert Marr as County Treasurer of Thurston County, expired on the 8th day of January, 1913, by the election and qualification of W. H. Britt, as such Treasurer, who at once succeeded to such office with all the duties and obligations thereof, but plaintiff denies each and every other allegation, matter and thing contained in paragraph III.

IV.

Plaintiff admits that the defendants named in paragraph IV executed and delivered to plaintiff their certain undertaking in writing, a copy of which is attached to plaintiff's amended complaint, and marked Exhibit "B" and made a part thereof. But [33] plaintiff denies each and every other allegation contained and set forth in said paragraph.

V.

Plaintiff denies each and every allegation, matter and thing contained and set forth in paragraph V.

REPLY TO THE SECOND AFFIRMATIVE
DEFENSE.

I.

Plaintiff admits the allegations contained in paragraph I.

II.

Plaintiff admits that the State Bank of Tenino, as principal, and plaintiff, as surety, executed and delivered a certain depository bond, a copy of which is attached to plaintiff's amended complaint, and marked Exhibit "A." Plaintiff denies the other allegations, matters and things contained and set forth in paragraph II.

III.

Plaintiff admits that the term of office of Robert Marr as County Treasurer of Thurston County, expired on the 8th day of January, 1913, by the election and qualification of W. H. Britt as such Treasurer, who at once succeeded to such office with all the duties and obligations thereof, but plaintiff denies

each and every other allegation, matter and thing contained in paragraph III.

IV.

Plaintiff admits that the defendants named in paragraph IV executed and delivered to plaintiff their certain undertaking in writing, a copy of which is attached to plaintiff's amended complaint and marked Exhibit "B" and made a part thereof, but plaintiff denies each and every other allegation contained and set forth in said paragraph IV. [34]

V.

Plaintiff denies each and every allegation, matter and thing contained and set forth in paragraph V.

VI.

Plaintiff admits that on the 29th day of May, 1914, one W. H. Britt was the duly elected, qualified and acting county treasurer of Thurston County, Washington, and successor of said Robert Marr, former treasurer, but denies each and every other allegation, matter and thing contained and set forth in paragraph VI. And especially denies that said bond, Exhibit "A" was released, cancelled or discharged, or that plaintiff was released, relieved or discharged from liability thereon, but plaintiff admits that said bond was renewed by the execution and delivery of the bond, Exhibit "C," a copy of which is attached to plaintiff's amended complaint, and as alleged and set forth in paragraph VIII of plaintiff's amended complaint.

VII.

Plaintiff denies each and every allegation, matter and thing contained and set forth in paragraph VII.

VIII.

Plaintiff denies each and every allegation, matter and thing contained and set forth in paragraph VIII.

WHEREFORE plaintiff prays judgment according to the prayer of its amended complaint on file herein.

C. B. WHITE,
FLETCHER & EVANS.

(Filed May 29, 1916.) [35]

**Reply to Second Amended Answer of T. F. Mentzer
and Elizabeth E. Mentzer, and Eva Copping,
Wife of David Copping, Deceased.**

Comes now the plaintiff and replying to the second amended answer filed herein by defendants T. F. Mentzer and Elizabeth E. Mentzer, his wife, and Eva Copping, admits, denies and alleges as follows:

**REPLY TO THE ANSWER RAISING THE
GENERAL ISSUE.**

I.

Replying to paragraph IV plaintiff denies that it has any knowledge or information sufficient to form a belief as to whether or not defendant T. F. Mentzer ceased to be a director of the State Bank of Tenino on the 1st day of May, 1912, or as to when or if at all he ever ceased to be a director of said bank, or as to whether he has not since been, and is not still a director of said bank.

II.

Replying to paragraph VI it denies that the bond therein referred to was applied for to run to Robert

Marr as County Treasurer of Thurston County, Washington; denies that said bond was applied for, for any purpose other than to secure a repayment to the County Treasurer of Thurston County, Washington, for deposits to be made by the county in said bank.

III.

Plaintiff specifically admits the allegations, matters and things contained and set forth in paragraph XVII.

REPLY TO THE FIRST AFFIRMATIVE DEFENSE.

I.

Plaintiff admits the allegations, matters and things contained and set forth in paragraph I. [36]

II.

Plaintiff admits that the State Bank of Tenino, as principal, and plaintiff, as surety, executed and delivered a certain depository bond, a copy of which is attached to plaintiff's amended complaint and marked Exhibit "A." Plaintiff denies the other allegations, matters and things contained and set forth in paragraph II.

III.

Plaintiff admits that the term of office of Robert Marr as County Treasurer of Thurston County, expired on the 8th day of January, 1913, by the election and qualification of W. H. Britt, as such treasurer who at once succeeded to such office with all the duties and obligations thereof, but plaintiff denies each and every other allegation, matter and thing contained in paragraph III.

IV.

Plaintiff admits that the defendants named in paragraph IV executed and delivered to plaintiff their certain undertaking in writing, a copy of which is attached to plaintiff's amended complaint and marked Exhibit "B" and made a part thereof. But plaintiff denies each and every other allegation contained and set forth in said paragraph.

V.

Plaintiff denies each and every allegation, matter and thing contained and set forth in paragraph V.

REPLY TO SECOND AFFIRMATIVE DEFENSE.

I.

Plaintiff admits the allegations contained in paragraph I.

II.

Plaintiff admits that the State Bank of Tenino as principal [37] and plaintiff as surety, executed and delivered a certain depository bond, a copy of which is attached to plaintiff's amended complaint, and marked Exhibit "A." Plaintiff denies the other allegations, matters and things contained and set forth in paragraph II.

III.

Plaintiff admits that the term of office of Robert Marr as County Treasurer of Thurston County, expired on the 8th day of January, 1913, by the election and qualification of W. H. Britt, as such treasurer, who at once succeeded to such office with all the duties and obligations thereof, but plaintiff denies each and every other allegation, matter and

thing contained in paragraph III.

IV.

Plaintiff admits that the defendants named in paragraph IV executed and delivered to plaintiff their certain undertaking in writing, a copy of which is attached to plaintiff's amended complaint and marked Exhibit "B" and made a part thereof. But plaintiff denies each and every other allegation contained and set forth in said paragraph IV.

V.

Plaintiff denies each and every allegation, matter and thing contained and set forth in paragraph V.

VI.

Plaintiff admits that on the 29th day of May, 1914, one W. H. Britt was the duly elected, qualified and acting county treasurer of Thurston County, Washington, and successor of said Robert Marr, former treasurer, but denies each and every other allegation, matter and thing contained and set forth in paragraph VI. And especially denies that said bond, Exhibit "A" was released, cancelled or discharged or that plaintiff was released, relieved or discharged from liability thereon, but plaintiff admits that said bond was renewed by the execution and delivery of the bond, Exhibit [38] "C," a copy of which is attached to plaintiff's amended complaint, and as alleged and set forth in paragraph VIII of plaintiff's amended complaint.

VII.

Plaintiff denies each and every allegation, matter and thing contained and set forth in paragraph VII.

VIII.

Plaintiff denies each and every allegation, matter and thing contained and set forth in paragraph VIII.

WHEREFORE plaintiff prays judgment according to the prayer of its amended complaint on file herein.

C. B. WHITE,
FLETCHER & EVANS,
Attorneys for Plaintiff.

(Filed May 29, 1916.) [39]

Judgment.

On the 15th day of November, A. D. 1916, this cause came on for trial, plaintiff appearing with C. B. White and Fletcher & Evans, its attorneys, defendants T. F. Mentzer and Elizabeth E. Mentzer, his wife, A. D. Campbell and Jessie E. Campbell, his wife, Eva Copping, and Eva Copping, as administratrix of the estate of David Copping, deceased, appearing with P. M. Troy and Bates, Peer & Peterson, their attorneys, and a jury having been duly empanelled and sworn to try said cause, the trial thereof proceeded by introduction of evidence and proof in plaintiff's behalf; and at the conclusion thereof and when plaintiff rested its case, defendants jointly and severally by motion challenged the sufficiency of the evidence offered in plaintiff's behalf to entitle it to the relief demanded in its complaint, or to any relief, and moved the court for a judgment of nonsuit and dismissal of plaintiff's action, and for costs; whereupon, said

motion was argued to the court by counsel for the respective parties, and upon consideration thereof and on the 16th day of December, A. D. 1916, the Court being of the opinion that the said motion was well taken, granted the same and discharged the jury from further consideration of said cause;

It is therefore ORDERED AND ADJUDGED that plaintiff's action herein be and the same is hereby dismissed.

IT IS FURTHER ORDERED AND ADJUDGED that defendants have and recover their costs and disbursements herein to be taxed; to all of which plaintiff excepts, which exception is hereby allowed.

Dated February 5th, 1917.

EDWARD E. CUSHMAN,

Judge.

(Filed Feb. 5, 1917.) [40]

Order Extending Time Ten Days from February 6, 1917, to Prepare, etc., Bill of Exceptions.

IT IS BY THE COURT ORDERED that the July, 1916, term of this court be and is extended for a period of ten (10) days from this date for the purpose of preparing, filing and settling bill of exceptions and for filing assignment of errors and petition for writ of error, making and entering order allowing a writ of error and fixing the amount of the bond on said writ of error and supersedeas.

Done in open court this 6th day of February, A. D. 1917.

EDWARD E. CUSHMAN,
Judge.

(Filed Feb. 6, 1917.) [41]

**Order Extending Time to February 19, 1917, for
Hearing of Settlement of Bill of Exceptions.**

This being the time fixed for hearing on plaintiff's bill of exceptions and for settling and certifying the same, and the Court being engaged in other matters, and with the consent of plaintiff and defendants, it is by the Court ordered that this hearing be and is continued to the 19th day of February, 1917, at 10 o'clock A. M. of said day, at which time said matter will be heard.

Done in open Court this 13th day of February, 1917.

EDWARD E. CUSHMAN,
District Judge.

(Filed Feb. 13, 1917.) [42]

**Order Extending Time to March 5, 1917, for Hearing,
etc., on Bill of Exceptions.**

On consent of plaintiff and defendants appearing by their respective attorneys, it is by the Court ordered that the time for hearing and certifying the Bill of Exceptions be and is continued to March 5th, 1917.

EDWARD E. CUSHMAN,
Judge.

(Filed Feb. 19, 1917.) [43]

Statement of Facts and Bill of Exceptions.

BE IT REMEMBERED that heretofore on the 15th day of November, 1916, the above-entitled cause coming on regularly for trial before Honorable E. E. Cushman, Judge of the above-entitled court, and a jury, and the plaintiff being represented by its attorneys John D. Fletcher, Robert E. Evans and C. B. White, and the defendant T. F. Mentzer and Elizabeth E. Mentzer his wife, and Eva Copping, wife of David Copping, deceased, by their attorney P. M. Troy, and the defendants A. D. Campbell and Jessie E. Campbell, his wife, by their attorneys C. O. Bates, and Charles T. Peterson, the defendants Isaac Blumauer and W. Dean Hays and Ora J. Hays, his wife, not appearing, the jury having been called and sworn to try the cause, counsel for plaintiff having stated to the jury the facts which plaintiff expects to prove in the trial hereof, the following proceedings were had and done:

Testimony of George W. Allen, for Plaintiff.

GEORGE W. ALLEN, a witness called by the plaintiff, being duly sworn testifies as follows:

Direct Examination by Mr. FLETCHER.

Thereupon the following proceedings were had:

Mr. Peterson for all defendants appearing:

“If the Court please, the defendants appearing jointly and severally object to the introduction of any evidence under the complaint as filed on the grounds and for the reason that it does not state a cause of action against the defendants or either of

(Testimony of George W. Allen.)

them. I do not care to argue the matter.

The COURT.—Objection overruled, exception allowed.

Witness ALLEN then testified:

My name is George W. Allen; I am and have been the general agent of the plaintiff, National Surety Company for Western [44] Washington, located at Seattle since early in 1911. I have been in the surety business connected with the plaintiff for the past fourteen years.

I, as general agent of the plaintiff, had negotiated with the Tenino State Bank of Tenino, Washington, regarding the furnishing of the depository bond by that bank to secure deposits of moneys of Thurston County. That as a result of such negotiations the National Surety Company, the plaintiff, executed a five thousand dollar depository bond as surety for the State Bank of Tenino to secure the Treasurer of Thurston County for deposits of county moneys.

Witness identifies bond dated June 22d, 1911 as the bond referred to.

Thereupon the following proceedings were had:

Mr. FLETCHER.—We have the file of the clerk's office of Thurston County containing this bond and offer in evidence the file.

Mr. PETERSON.—The defendants object on the ground that it is incompetent, irrelevant and immaterial.

The Court overruled the objection and allowed defendants an exception, and the file was admitted in

evidence as Plaintiff's Exhibit 1.

Mr. FLETCHER.—As this file has to be returned to the clerk's office, I will read into the record the receipts and letters attached to the bond, and will supply the record with a copy of the bond and certificate of appointment of officers.

Mr. PETERSON.—We have no objection to Mr. Fletcher's reading the papers into the record or substituting a copy of the bond and certificate of appointment of officers for the original, but do object to these receipts, letters and bond on the ground that the same are, and each of them is irrelevant and immaterial.

Objection overruled, exception allowed defendants.

[45]

Mr. FLETCHER.—The first paper of Plaintiff's Exhibit 1 is on the letter-head of Geo. W. Allen & Co. Liability Surety Bonds, Burglarly, Fire and General Insurance. Dated June 5, 1912. This is a receipt and is as follows:

Plaintiff's Exhibit 1—Receipt, June 22, 1912, Allen & Co. to State Bank of Tenino.

“STATE BANK OF TENINO,

Washington. 6/22/12.

Covers depository bond to Robert Marr, Treasurer of Thurston County, number 596,917, amount \$5,000, term one year, premium \$25.00, paid 6/10/12.

GEO W. ALLEN & CO., per A.”

Defendants object on the ground that it is irrelevant and immaterial. Objection overruled, exception allowed defendants.

It is agreed that any objection made by any of the defendants is for the benefit of all the defendants appearing.

Mr. FLETCHER.—Attached to the paper just read is a letter on the letter-head of State Bank of Tenino, United States Depository, Isaac Blumauer, President, T. F. Mentzer, Vice-president, W. Dean Hays, Vice-president and Cashier. A. D. Campbell, Assistant Cashier. Dated Tenino, Washington, June 7, 1912, and reads as follows:

Letter, June 7, 1912, State Bank of Tenino to Marr.
“Hon. Robert Marr, Treasurer, Olympia, Washington.

Enclosed herewith is letter from National Surety Company in re, \$5,000 depository bond which indicates that same is continuous upon payment of the premium which we have this day remitted. But if there is any further evidence on the payment we will be glad to furnish it. With kind personal regards I am,

Very truly yours,

STATE BANK OF TENINO,
W. DEAN HAYS, V-President.”

Defendants make the same objection as to the former paper. Objection overruled and exception allowed defendants.

Mr. FLETCHER.—I will now read another receipt which on the same letter-head as the previous receipt, that is, on the letter-head [46] of Geo. W. Allen & Co., dated June 22, 1913, to the State Bank of Tenino, W. Dean Hays, Cashier, Tenino,

Washington. Covers depository bond to the Treasurer of Thurston County, Washington, from the National Surety Company, numbered 596,917, amount \$5,000, term one year, premium \$25. Paid 6/12/13. Geo. W. Allen & Co.

Attached to this receipt is the following letter on the letter-head of the State Bank of Tenino with the same officers as the previous letter, dated Tenino, June 13, 1913, and reads as follows:

Letter, June 13, Hays to Britt.

“Mr. W. H. Britt, County Treasurer,
Olympia, Washington.

Dear Sir: Enclosed please find herewith receipt for premium on bond No. 596,617, National Surety Company for \$5,000 which expires on June 22, which continues same in force for one year. Thanking you to acknowledge receipt of the same I am

Very truly yours,

W. DEAN HAYS,

Cashier.”

The defendants make the same objections as to the former exhibit. Objection overruled, exception allowed to defendants.

Mr. FLETCHER.—Attached to these same papers I will read the following into the record which is on the letter-head of the National Surety Company, Seattle, Washington, dated January 24th, 1913. Addressed to W. Dean Hays, Cashier State Bank of Tenino, Tenino, Washington. Reads as follows:

Letter, January 24, 1913, Welch to Hays.

“Dear Sir: Acknowledging your esteemed favor of the 20th inst. herewith duplicate receipt which

(Testimony of George W. Allen.)

renews your depository bond in favor of Treasurer of Thurston County, Washington, from June 22, 1912 until June 22nd, 1913. Trusting this is satisfactory, and with kindest regards I am,

Yours very truly,

EDW. P. WELCH, Secy." [47]

Attached to this letter is a duplicate receipt which is the same as the first paper above read into the record.

To the foregoing offer defendants make the same objection as to the former offer. Objection overruled, and exception allowed.

Mr. Fletcher then read to the jury the bond dated June 22d, 1911, a copy of which it was agreed might be substituted for the original in the record.

Witness Allen then proceeding, testified as follows:

At the time of executing this bond which has been offered in evidence in the file, Plaintiff's Exhibit 1, the plaintiff required the directors and officers of the Tenino State Bank and their wives to execute and deliver to the plaintiff an indemnity agreement dated June 22d, 1911. This agreement was identified by the witness and offered in evidence under permission of the Court to substitute a copy of the original was in a dilapidated condition.

Defendants objected to the offer on the ground that it is immaterial, irrelevant and incompetent, admitting, however, the execution of the paper.

Objection overruled, exception allowed, and the indemnity agreement was admitted in evidence and

(Testimony of George W. Allen.)

marked Plaintiff's Exhibit 2.

Witness Allen proceeding testified that the premium of twenty-five dollars required by the bond was paid. That when the year from the date of the bond expired, to-wit in June, 1912, the plaintiff billed the bank for a subsequent year's premium, which was paid, and receipt sent the bank. That when this second year was about to expire, to wit, in June, 1913, plaintiff again billed the bank for a year's premium, which was paid for the ensuing year, and receipt sent the bank. The receipts are those read into the record as a part of the file, Plaintiff's Exhibit 1. That the payment of these premiums extended the life of the bond to June 22, 1914. In June, 1914, the [48] plaintiff billed the bank for the ensuing year's premium and certain correspondence was had between W. Dean Hays representing the bank as its vice-president and witness representing the National Surety Company.

Witness identified a letter from him to Vice-president Hays dated May 23, 1914, which letter was offered in evidence.

Defendants objected to the offer, not to the nature of the proofs, but on the ground that the liability if any, is on a written instrument, and acts of the State Bank of Tenino or the National Surety Company can add to or vary their contract or affect it.

Objection overruled and exception allowed defendants. The letter was admitted in evidence as Plaintiff's Exhibit 3.

Witness identified a letter addressed to him and

(Testimony of George W. Allen.)

signed by W. Dean Hays, vice-president, on the letter-head of the bank, dated May 22, 1914. The letter was offered in evidence, and the defendants objected, not to the form of the proof, but that the letter was incompetent, irrelevant and immaterial, and not shown to be done with the knowledge and acquiescence of the defendants or either of them.

Objection overruled, exception allowed defendants, and the letter admitted in evidence as Plaintiff's Exhibit 4.

Plaintiff then identifies a letter which plaintiff offered in evidence.

Defendants made the same objection as to the former offer. Objection was overruled, and exception allowed the defendants. The letter admitted in evidence as Plaintiff's Exhibit 5.

Witness identified a letter dated May 26th, 1914, from Geo. W. Allen, Mgr. to W. Dean Hays, vice-president of the State Bank of Tenino, which letter was offered in evidence by the plaintiff. The defendants made the same objection as to the former offer, and in addition that the letter stated a conclusion of the writer. [49]

Objection was overruled, exception allowed defendants, and the letter admitted in evidence as Plaintiff's Exhibit 6.

Witness identifies a letter dated June 25th, 1914, from W. Dean Hays, vice-president of State Bank of Tenino, to witness, manager of National Surety Company.

Plaintiff offered the letter in evidence, defendants

(Testimony of George W. Allen.)

made the same objections as to the former offer, that it was immaterial, irrelevant and incompetent. Objection overruled exception allowed defendant, and letter admitted in evidence as Plaintiff's Exhibit 7.

Plaintiff offered in evidence a letter dated May 26th, 1914, directed to the State Bank of of Tenino, and signed by W. H. Britt. Defendants admitted that the letter was signed by W. H. Britt who was then County Treasurer of Thurston County, Washington, but objected to the letter on the ground that it was incompetent, irrelevant and immaterial. Objection overruled, exception allowed, letter admitted as Plaintiff's Exhibit 8.

Plaintiff offered copy of a letter dated May 29th, 1914, directed to W. H. Britt, Treasurer, Olympia, Washington, signed State Bank of Tenino, under it the initial "H" representing the signature of W. Dean Hays, vice-president of the bank. The defendants objected to the letter, not on the ground that it was a copy, but that it was irrelevant and immaterial. Objection overruled, exception allowed defendants. Letter admitted in evidence as Plaintiff's Exhibit 9.

Witness Allen proceeding testified that the bond which had been admitted in evidence in the file marked Exhibit 1, was executed by the National Surety Company.

Witness then identifies an instrument, being a bond dated June 22, 1914. It was admitted by the defendants that this bond was obtained by the plaintiff from the files of the clerk's office of [50] Thurs-

(Testimony of George W. Allen.)

ton County, State of Washington.

This bond, with the endorsements on the back of it, was offered in evidence. The defendants objected on the ground that it is immaterial, incompetent and irrelevant, and not an obligation or undertaking contemplated by the indemnity agreement sued on in this action. Objection overruled and exception allowed defendants. The bond was admitted in evidence as Plaintiff's Exhibit No. 10.

Witness Allen proceeding testified that the release referred to in some of the letters that have been admitted in evidence, was a release now identified by him, being Identification No. 11. This release was offered in evidence. The offer was objected to by the defendants as immaterial, irrelevant and incompetent. Objection overruled and exception allowed defendants. The release was admitted in evidence and marked Plaintiff's Exhibit 11.

Thereupon the following took place:

Question by Mr. Fletcher to witness Allen:

"What was the purpose of making the release become effective June 22, 1914?"

Defendants object on the ground that the release speaks for itself. Objection sustained, exception allowed plaintiff.

"Mr. FLETCHER.—I will ask you, Mr. Allen, what was the purpose of obtaining the release of that first bond?"

"Mr. PETERSON.—Defendants object to that. Objection sustained, exception allowed plaintiff.

Mr. FLETCHER.—I will ask you, Mr. Allen, if be-

(Testimony of George W. Allen.)

tween the expiration of the first bond, June 22, 1911, and the coming into effect of the bond of June 22, 1914, was there any intervening period at which times the National Surety Company would not have been bound?"

"A. No, sir, I—(interrupted).

Mr. PETERSON.—We make the same objection, and also on the ground that the question calls for a conclusion." [51]

Objection sustained, exception allowed plaintiff.

"Mr. FLETCHER.—I think I have perhaps the right to show by the witness that one bond was a substitution for the other."

"The COURT.—It seems to me that everybody in the room is about as well qualified to answer the question as he is. It all seems to be in writing."

Witness Allen proceeding testified that at the time the bond of June 22, 1914, was given, the indemnity agreement which has been signed by the defendant, and introduced in evidence as Plaintiff's Exhibit 2, was in the possession of the plaintiff at its home office. There was not at that time any new or other indemnity agreement taken. This indemnity agreement has never been surrendered by the plaintiff.

Cross-examination by Mr. PETERSON.

"We will offer in evidence in connection with the witness' testimony, defendants' identifications A and B."

No objections.

(Testimony of George W. Allen.)

Whereupon defendants' identifications were admitted in evidence as Defendants' Exhibits "A" and "B."

"Mr. PETERSON.—We have no further cross-examination, the plaintiff having waived identification of the two exhibits."

Redirect Examination by Mr. FLETCHER.

Witness Allen testified that Defendants' Exhibit "A" was an application to the National Surety Company, the plaintiff, by the State Bank of Tenino for a five thousand dollars depository bond, which the plaintiff wrote for it in June 1911, the same to take effect June 22, 1911. That this exhibit is the application for the bond dated June 22d, 1911. That Defendants' Exhibit "B," dated May 3, 1914, is an application for the bond written by the plaintiff and dated June 22d, 1914. Thereupon the following took place:

"Q. (By Mr. FLETCHER.) Mr. Allen, I will ask you if on furnishing surety bonds what is or is not required regarding an application of this nature from the applicant who desires a bond. [52]

"Mr. PETERSON.—The defendants object on the ground that it is incompetent, irrelevant and immaterial."

Objection sustained, exception allowed plaintiff.

"Mr. FLETCHER.—I offer to show that it is the universal rule to require such an application."

"The COURT.—I do not know that that would change it any whether it was the only time it had ever been done or whether it had been done forever.

(Testimony of George W. Allen.)

I do not see how that touches the question. The offer will be denied, exception allowed the plaintiff."

"Q. Mr. Allen, what connection, if any, is there between an application for a bond and an indemnity agreement indemnifying against loss on the bond?"

"Mr. PETERSON.—We object to that as calling for a conclusion of the witness."

"The COURT.—I do not see the necessity for it, but I will overrule the objection and leave you the motion to strike it out in case anything objectionable creeps in."

"WITNESS.—The application for a bond is signed by the principal in the bond, the bank in this case, and it is for the purpose of giving information in connection with the application and showing the details of the bond applied for. The indemnity agreement is also signed by the applicant with other signers indemnifying the surety against loss on the bond."

"Mr. PETERSON.—We move to strike the answer on the ground that it states a conclusion of the witness as to the effect of the different instruments."

"The COURT.—Motion denied, exception allowed defendants."

"Mr. FLETCHER.—We will offer in evidence plaintiff's identification No. 12 which it is stipulated is a correct copy of the Commissioners' minutes of the Board of County Commissioners of Thurston County under date of Tuesday January 3d, 1911, and that Champion [53] B. Mann, was chairman and R. A. Cruikshank, Clerk of the Board. No objection.

(Testimony of George W. Allen.)

Whereupon the identification was admitted in evidence as Plaintiff's Exhibit 12.

"Mr. FLETCHER.—We will offer in evidence Plaintiff's Identification No. 13 under the same stipulation, except that these are the minutes of meeting on Monday January 8, 1912, and Mr. A. M. Rowe was then Chairman of the Board."

No objection.

Whereupon said identification was admitted as Plaintiff's Exhibit 13.

"Mr. FLETCHER.—We will offer in evidence under the same stipulation the Commissioners' minutes under date of January 11, 1913."

"Mr. PETERSON.—Defendants object that it is irrelevant and immaterial."

Objection overruled, exception allowed defendants.

Whereupon Identification was admitted as Plaintiff's Exhibit 14.

"Mr. FLETCHER.—We will offer in evidence under the same stipulation the Commissioners' minutes of Monday January 1st, 1914."

"Mr. PETERSON.—To which defendants make the same objection."

Objection overruled, exception allowed.

Whereupon said identification was admitted as Plaintiff's Exhibit 15.

Testimony of R. A. Langley, for Plaintiff.

R. A. LANGLEY, a witness produced on behalf of the plaintiff, being first duly sworn testified as follows:

Direct Examination by Mr. FLETCHER.

My name is R. A. Langley; I am receiver of the State Bank of Tenino. Was appointed in October, 1914. The bank closed its doors on the 17th of September, 1914. As receiver he has possession of the books of the bank, and those books show the account of Robert Marr as Treasurer of Thurston County. That under stipulation between the attorneys for plaintiff and defendant he has produced a copy of this [54] account in place of the original which copy is a correct copy of the account. That this account commenced June 20th, 1911, and ended January 8, 1913, the last date being the date of the expiration of Robert Marr's term of office as County Treasurer of Thurston County. The account was offered in evidence without objection and admitted as Plaintiff's Exhibit No. 16.

(Witness proceeds.) I have with me a copy taken from the books of the account of W. H. Britt as County Treasurer, of Thurston County, producing the copy in place of the original under the stipulation between the parties. That the account is a correct account from the books. This account commenced January 15, 1913, and ended Sept. 17, 1914. It being stipulated between the parties that this account, Plaintiff's Identification 17, covers the ac-

(Testimony of R. A. Langley.)

count of W. H. Britt as County Treasurer of Thurston County with the State Bank of Tenino, during his term of office and down to the failure of the bank. The account was admitted in evidence without objection as Plaintiff's Exhibit No. 17.

(Witness proceeds.) Under the designation of checks in the account means withdrawals by check, and under deposits means deposits in the bank from time to time by Mr. Marr as regards his account and by Mr. Britt as regards his account. Under the word balance shows the daily balance in the bank of the depositor. Plaintiff's Exhibit 17 shows the correct amount that W. H. Britt, as County Treasurer, had in the bank when the bank failed. It was admitted by the parties that this balance was \$12,853.58. Whereupon the following took place:

"Mr. FLETCHER.—Mr. Langley, I will ask you if you have your books showing how and in what manner Robert Marr as Treasurer closed his account on January 8th, 1913, as to whether or not he drew out the money, or what constituted the closing of his account.

"Mr. PETERSON.—We object to that as being irrelevant and [55] immaterial; there is no claim made here for any loss until September 19, 1914. The allegation of the complaint is that the loss was suffered on September 19, 1914, by this bank closing its doors and ceasing longer to do business."

"The COURT.—Well, as I understand it, this is regarding whether the account was fully paid when Marr went out."

(Testimony of R. A. Langley.)

“Mr. FLETCHER.—Yes.

“Mr. PETERSON.—It is not claimed that there was any loss suffered during Mr. Marr’s administration or at the close of his administration. There is no claim loss until September 19th, 1914. We are not prepared to meet anything else in this case.”

“The COURT.—Well, as Mr. Fletcher says, it is whether or not it was a continuous account or closed when Mr. Marr went out.”

“Mr. PETERSON.—What difference would it make if no loss occurred?”

“The COURT.—It might be, if this was shown, that it was simply a bond for Mr. Marr’s account; if it was fully paid when he went out that was all there was to it. They want to show that it was a continuous account; that the money never was paid, but that something else was done. Objection will be overruled, exception allowed the defendants.”

(Witness proceeds.) Mr. Marr’s account shows that there was a demand certificate given him for the amount he had in the bank closing his account. His account was debited and a demand certificate for the amount was issued to him. This was the way his account was closed. That there is no other account of Robert Marr with the bank as Treasurer. Turning to Mr. Britt’s account, this was opened on January 15th, 1913, by deposit by him with the bank of a demand certificate, being the same number of certificate and the same amount as the certificate issued to Mr. Marr. Certificate being No. 1098, and

(Testimony of R. A. Langley.)

being for \$9,974.76, and is the same number of certificate and the same amount [56] as that issued to Mr. Marr as county treasurer on January 8, 1913, when his account was closed. The deposit of this certificate was the opening of Mr. Britt's account as treasurer with the bank. Defendants object to this testimony, and move to strike out the questions and answers on the ground that the same are irrelevant, immaterial and incompetent. Objection overruled, and exception allowed defendants.

(Witness proceeds.) The minute-book of stockholders and trustees' meetings of Tenino State Bank was in his possession. This came into his hands when he took possession as Receiver of the bank. That the book submitted is the only book that he finds containing minutes of stockholders and directors' meetings. It is the only one he ever heard of the bank having. Thereupon the following took place:

“Mr. FLETCHER.—It is stipulated that during all the times mentioned in the complaint, defendants Isaac Blumauer was the owner of 11 shares of stock, defendant T. F. Mentzer of 5 shares of stock, defendant David Copping of 10 shares of stock, defendant A. D. Campbell of 10 shares of stock, and W. D. Hays of 51 shares of stock; that the capital stock of the bank was \$10,000, divided into 100 shares of \$100 each. That at all times mentioned in the minutes of stockholders and directors' meetings, commencing with January 10, 1911, defendant Isaac Blumauer

(Testimony of R. A. Langley.)

was President of the Bank and defendant W. Dean Hays its cashier."

"Mr. PETERSON.—Now, it is understood that while the defendants stipulated to these facts, they object to their introduction on the ground that they are irrelevant, incompetent and immaterial."

Objection overruled, exception allowed defendants.

"Mr. FLETCHER.—It is further stipulated that the first minutes show Mr. Mentzer was a director and vice-president. These are the minutes of January 10, 1911. That from January 10, 1911 to January 18, 1913, continuously, the minutes of the bank show that T. F. Mentzer was vice-president and director and the minutes do not contain any [57] record of the resignation having been made by him, and that there are no minutes of stockholders or directors' meetings after July 24, 1913."

"Mr. PETERSON.—*Defendant* do not object to the stipulation as to what the minutes show, but do not admit it to be a fact that T. F. Mentzer was an officer or director or vice-president subsequent to January, 1913."

"The COURT.—This is a stipulation as to what the minutes show or do not show. The objection will be overruled, exception allowed defendants."

"Mr. FLETCHER.—It is also stipulated that these minutes show that A. D. Campbell was a di-

(Testimony of R. A. Langley.)

rector and assistant cashier during all the times mentioned."

"Mr. PETERSON.—Defendants do not object to the stipulation as to what the minutes show, but object to the matter as immaterial, irrelevant and incompetent."

Objection overruled, exception allowed defendants.

"Mr. FLETCHER.—We offer the minute-book in evidence with the request that we may copy the minutes and substitute copy for the book."

"Mr. PETERSON.—We do not object to the copy, but we object to the offer as being immaterial, irrelevant and incompetent."

Objection overruled, exception allowed defendants.

The minute-book with privilege to substitute a copy was admitted in evidence as Plaintiff's Exhibit 18.

"Mr. FLETCHER.—It is admitted that at all times mentioned in the proceedings W. Dean Hays and Ora J. Hays were husband and wife; A. D. Campbell and Jessie E. Campbell were husband and wife, and that David Copping and Eva Copping were husband and wife. It is further admitted that since the commencement of this action, David Copping died; that prior to his death he conveyed all the property to his wife, and that the property was community property of himself and wife. [58] That Isaac Blumauer and W. Dean Hays and Ora Hays are in default."

(Testimony of R. A. Langley.)

Cross-examination by Mr. PETERSON.

Witness Langley identifies defendant's identification "C" as being found by him in the letter-file of the bank when he took possession as receiver. Witness also identifies in the same way the defendants' identifications "D" and "E"; that he is acquainted with the defendant T. F. Mentzer, knows his signature and handwriting. That identification "E" is in his handwriting and contains his signature, and is dated March 8th, 1913. Thereupon identification "E" was offered in evidence, it being the resignation of Mr. Mentzer as vice-president of the State Bank of Tenino, dated March 8, 1913.

The offer was objected to by plaintiff as not being cross-examination, and as being a part of defendant's defense. Objection overruled, exception allowed plaintiff, and the identification was admitted as Defendants' Exhibit "E."

Witness proceeds and identifies defendants' identification "F" as being found by him in the letter files of said State Bank of Tenino when he assumed charge as receiver. The identification was offered in evidence, being a letter from defendant Mentzer to defendant Blumauer dated March 8, 1913, regarding Mr. Mentzer's resignation. The offer was objected to on the same grounds as the prior offer. Objection overruled, exception allowed plaintiff. Whereupon the letter was admitted as Defendants' Exhibit "F."

Under direction of the Court, as these two exhibits were difficult to read, they were to be copied

(Testimony of R. A. Langley.)

by the defendants' attorney and copy filed as a part of these exhibits. Thereupon the following proceedings were had:

"Mr. FLETCHER.—Now, Mr. Peterson, I understand the defendants will admit that under plaintiff's liability on this bond of June 22, 1914, and on demand of the Treasurer of Thurston County, plaintiff paid the Treasurer of Thurston County \$4,327.87 on December 30th, 1914." [59]

"Mr. PETERSON.—Yes, that is admitted, but objected to on the ground that it is incompetent, irrelevant and immaterial."

Objection overruled, exception allowed defendants.

"Mr. FLETCHER.—It is further admitted that shortly after the bank's failure, the Treasurer of Thurston County made demand upon *upon* plaintiff to pay its share of the loss by reason of the bond of June 22d, 1914."

"Mr. PETERSON.—Yes, that is admitted, but is objected to on the ground that it is irrelevant and immaterial."

Objection overruled, exception allowed defendants.

"Mr. FLETCHER.—It is further admitted that plaintiff upon receiving that demand at once made upon the defendants to pay the loss by reason of their being on the indemnity agreement of June 22d, 1911."

"Mr. PETERSON.—We will admit that fact but object to it as it is immaterial."

(Testimony of R. A. Langley.)

Objection overruled, exception allowed defendants.

“Mr. FLETCHER.—It is further admitted that on the refusal of defendants’ plaintiff then paid the Treasurer as admitted above.”

“Mr. PETERSON.—We will admit that fact but object to it as to its materiality.”

Objection overruled, exception allowed defendants.

“Mr. FLETCHER.—It is further admitted that on the bank’s failure, the plaintiff expended the sum of \$14 in investigating its liability.”

“Mr. PETERSON.—That is admitted, but objected to as irrelevant and immaterial.”

Objection overruled, exception allowed defendants.

“Mr. FLETCHER.—It is further admitted that the plaintiff is a corporation organized under the laws of the State of New York with its principal place of business in New York City, and that it is a citizen and resident of the State of New York. That it is duly [60] qualified and licensed to prosecute a general surety business in the State of Washington; that it has fully complied with the laws of the State of Washington in that regard; in other words, that the plaintiff is qualified to maintain this action.”

“Mr. PETERSON.—Yes, that is admitted.

“Mr. FLETCHER.—It is further admitted that on the payment that the plaintiff made to the county of \$4,327.87, the plaintiff received a dividend from

the receiver of the bank, and that there should be credited the sum of \$855.82 on the above amount as of date April 21, 1915. That the plaintiff and no one else has ever paid anything upon this claim excepting the receipt of that dividend."

"Mr. PETERSON.—Yes, that is all admitted."

"Mr. FLETCHER.—That is our case."

(Plaintiff rests.)

"Mr. PETERSON.—If the Court please, the defendants at this time jointly and severally move the court for a judgment of nonsuit and dismissal of plaintiff's action and for costs on the ground and for the reason that the plaintiff has failed to establish a cause of action against the defendants or either of them, and for the further reason and upon the further ground that the proofs offered by plaintiff show affirmatively that it is not entitled to recover against the defendants or either of them."

The foregoing motion was argued by counsel for the respective parties, and at the close of argument the court sustained the motion and in doing so stated as follows:

"The COURT.—This seems to be a question of law under the evidence which has been introduced. I agree with Mr. Fletcher to this extent: These men signing this indemnity agreement, being interested in the bank, that is one of the circumstances to be taken into account in interpreting the contract. The recital that they signed this indemnity agreement in consideration of one dollars, that [61] may be enough to effect a consideration, but I do not deem

it of any importance in weighing the intent of the parties in entering into the agreement, or in changing the rule of *strictissimi juris*. The fact that they were interested in the bank—no doubt, their main purpose and interest in the matter was to further the business of the bank. I believe, in ruling on the demurrer, the matter that was in my mind when I sustained the demurrer to one of the affirmative defenses was regarding this right of action. It seems to me there is a difference in determining who has a right of action on this bond and determining what the bond means. It is true the treasurer, Marr, was the obligee in the bond; but not only that, but there was a provision in the bond that the company was only bound on account of money deposited in the bank by him or for him. Now, that is what was secured, and if the bonding company, for its benefit, put that provision in there, limiting its liability, and if such a provision was not contemplated, as subject to change, I do not see that it has any complaint to make if it was put in there for its advantage and it also resulted to the advantage of the indemnitors. While the fact that these indemnitors were furthering the advantage and interests of the bank, which I find to have been their main interest, yet there is no authority on the part of the Court to disregard these provisions in the main bond which are adopted and made a part of the indemnity agreement, by which the bonding company was only bound on account of money deposited by Marr, or to his credit under it, I find that the provisions of this indemnity agreement, having been on a printed form used by the

bonding company, are to be construed most strongly against the bonding company, and that these provisions in section five, regarding changes and alterations and the like, are changes and alterations of the instrument. It does not say the contract or agreement may be changed or anything of that kind. It says "the instrument" may be altered, changed, modified, limited or extended. [62] I find that to mean that such interlineations or changes in details may be made on the face of the instrument, not contrary to its purpose as would make it more full and complete but not different or contrary to its main purpose or effect. I do not believe that that section five would give anybody authority to tear up the contract in effect and make an entirely new one, increase the amount, change the parties or guarantee something entirely different. One thing that leads me to this conclusion is that, although that language about changing, altering or modifying is used, after they had used that language, which might be given a very broad meaning, they then go on and use the language about removing and extending, while, if the company could change, alter and modify in a broad sense, when by the contract provision it was to run for a year, it would not be necessary to say anything about renewing or extending it, in order to change or alter it to make it run for two years. If not so limited, it is not clear but that the indemnitors might be bound so long as the bank continued in business and the county had money to deposit. Such a result would require language more clear and unambiguous. For that reason, I believe that the words about

changing and modifying must be given some narrower meaning than they might otherwise have. I agree with Mr. Peterson's last argument regarding section eight, that is that by the bonds made "at the instance of us or any of us" is meant the changed instruments or new bonds in lieu of or in place of the bond referred to in the fifth paragraph in the indemnity agreement. I have very grave doubt, under the language of this agreement, whether there was any authority to make but one renewal. When authority was given to renew this bond, once renewed, under the ordinary rule of powers of attorney, the power would be exhausted when one renewal was granted; but, passing that by and granting that the second renewal was good, the bond was not given in place of or in lieu of this original bond because the original bond had expired and the new bond [63] went on beyond it, after this last renewal had expired. It was not a renewal because it was different in its terms from the original. The motion will be granted. Exception allowed. The only case cited which gave me any question about the matter was this one in 1st Wheaton, but there the language used by the Court is that the agent "was to perform such other duties as from time to time should be assigned to the office of agent by the board of directors." It is not like the bond in this case, where Marr was named as treasurer, but it simply designated the board of directors generally, and thereby his duties were made continuous, while here the language of the bond is: "Moneys deposited by or for Robert Marr, Treasurer."

“The motion will be granted and exception allowed the plaintiff. The defendant may prepare a judgment according to this ruling, and the plaintiff may have thirty days from date of entering the judgment to prepare and serve and file a bill of exceptions and statement of facts in this cause.”

The jury was then recalled and discharged by the Court from further considering this cause.

The plaintiff objected to the granting of the motion and to the discharge of the jury. Objection overruled, exception allowed the plaintiff.

**Certificate of United States District Judge Re
Certification of Bill of Exceptions and State-
ment of Facts.**

United States of America,
Western District of Washington,
Southern Division.

I, E. E. Cushman, the undersigned Judge of the District Court of the United States, Ninth Judicial Circuit, Western District of Washington, Southern Division, before whom the above-entitled cause was tried, do hereby certify that the matters and proceedings set forth [64] in the foregoing bill of exceptions and statement of facts are all of the matters and proceedings which occurred on the trial of said cause, and the same are hereby made a part of the record therein.

I further certify that said bill of exceptions and statement of facts contains all the material facts and evidence introduced on the trial of said cause by and on behalf of the respective parties thereto, together

with a statement of all motions, objections and rulings thereon, and exceptions taken thereto by the respective parties occurring in the trial of said cause, and the same are hereby made a part of the record in said cause, and that the exhibits introduced by the respective parties upon said trial will be filed herewith and the clerk of this court is directed so to do.

Counsel for the respective parties hereto being present and concurring herein.

IN WITNESS WHEREOF I have hereunto set my hand this 5th day of March, A. D. 1917, at Tacoma, in said District.

EDWARD E. CUSHMAN,

Judge.

(Filed Feb. 6, 1917.)

(Re-filed as certified March 5, 1917.) [65]

[Billhead of Geo. W. Allen & Co.]

Seattle, Wash., June 12th, 1913.

State Bank of Tenino,

W. Dean Hays, Cashier, Tenino, Wash.

Date. Company.

Covers.

Number.

Amount.

Term.

Premium.

6/22/13 National Depository bond to Treas-

urer, Thurston County,

Washington

596917

\$5,000

1 yr.

\$25.00

Paid 6/12/13.

GEO. W. ALLEN & CO.

Per G. W. A.

Letter, June 13, 1913, Hays to Britt.

[Letter-head of State Bank of Tenino.]

Tenino, Wash, June 13, 1913.

Mr. W. H. Britt,
County Treasurer,
Olympia, Wash.,

Dear Sir:—

Enclosed please find herewith receipt for premium on bond No. 596917, National Surety Co., for \$5,000 which expires on June 22, which continues the same in force one year.

Thanking you to acknowledge receipt of same, I am,

Very truly yours,

W. DEAN HAYS,

Cashier.

[Billhead of Geo. W. Allen & Co.]

Seattle, Wash., June 5, 192—

State Bank of Tenino,
Tenino, Wash.

Date.	Company.	Covers.	Number.	Amount.	Term.	Premium.
6/22/12	National	Depository Bond to Rob't.	596917	\$5,000.00	One year	\$25.00

Marr, Treasurer, Thurston
County.

Paid 6/10/12.

GEO. W. ALLEN & CO.
Per A.

Letter, June 7, 1912, State Bank of Tenino to Marr.

[Letter-head of State Bank of Tenino.]

Tenino, Wash., June 7, 1912.

Hon. Robert Marr, Treasurer,
Olympia, Wash.

Dear Sir:

Inclosed herewith is a letter from the National Surety Company in re \$5,000.00 depositary bond which indicates that the same is continuous upon the payment of the premium, which we have this day remitted, but if there is any further evidence on the payment, we will be glad to furnish it.

With kind personal regards, I am,

Very truly yours,

STATE BANK OF TENINO,

W. DEAN HAYS,

V. President.

WDH/TK.

Inc.

Ansd. 6/8/12. R. M.

Filed in Superior Court, Thurston Co., Wash.
Jun. 13, 1912. D. G. Parker, Clerk.

[Billhead of Geo. W. Allen & Co.]

Seattle, Wash., 1-23-13.

State Bank of Tenino,
Tenino, Wash.

Date.	Company.	Covers.	Number.	Amount.	Term.	Premium.
6/22/12	Natl. Your	Depository Bond to	596917	5000	1 yr.	\$25.00

Treas. Thurston Co., Wn.

Paid 1/23/13.

GEO. W. ALLEN & CO.

WELCH.

Duplicate.

Letter, January 24, 1913, Welch to Hays.

[Letter-head of National Surety Company]

Jan. 24, 1913.

W. Dean Hays, Cashier,
State Bank of Tenino,
Tenino, Washington.

Dear Sir:

Acknowledging your esteemed favor of the 20th inst., herewith duplicate receipt which renews your Depository Bond in favor of Treasurer of Thurston County, Washington, from June 22d 1912 until June 22d 1913.

Trusting this is satisfactory, and with kindest regards, I remain,

Yours very truly,

EDW. P. WELCH,

Secretary.

EPW/M.

Enc.

Plaintiff's Exhibit 1—Depository Bond, June 22, 1911, Between State Bank of Tenino et al. and Robert Marr.

KNOW ALL MEN BY THESE PRESENTS, That we, THE STATE BANK OF TENINO, of Tenino, Washington, as principal, and the National Surety Company, a corporation of the State of New York, as surety, are held and firmly bound unto Robert Marr, individually and as County Treasurer of the County of Thurston, State of Washington, in the full and just sum of five thousand (\$5,000.00)

dollars, lawful money of the United States for the payment of which well and truly to be made, the said principal and surety respectively bind themselves, their and each of their successors and assigns, jointly and severally, firmly by these presents.

SIGNED, SEALED AND DELIVERED, at Seattle, Washington, this 22nd day of June A. D. 1911.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, whereas the said Robert Marr has been elected and has qualified as Treasurer of Thurston County, State of Washington, and as such Treasurer, at the special instance and request of the said State Bank of Tenino, has deposited, or may hereafter, from time to time, deposit with, and place in charge of the said principal hereinbefore named, certain moneys, checks, etc., for the custody or for the proceeds of the face value of which the said Treasurer as such, may be responsible, and,

NOW, THEREFORE, if the said principal hereinbefore named shall in due and ordinary course of business, promptly pay to the said Treasurer upon demand and presentation of proper and valid checks therefor, in the usual and ordinary hours of business, all moneys and proceeds of all checks, etc., which have been or shall hereafter be deposited with, transferred to or placed in charge of the said principal, by or on behalf of the said Treasurer, and shall keep and hold harmless the above-named Robert Marr, individually, and as such Treasurer, from all liability, loss and damage which may arise, or accrue against the said Treasurer by reason of the deposit

or delivery of said funds, checks, etc., or any part thereof as aforesaid, and shall well and truly fulfill and perform any and every duty and obligation arising out of or connected with the deposits, or delivery of funds as aforesaid, by and on behalf of said Treasurer, then this obligation to be void; otherwise to be and remain in full force and effect.

PROVIDED, HOWEVER, upon the further following express conditions:

FIRST. That in the event of any default on the part of the principal written notice thereof with a verified statement of the facts showing such default, and the date thereof, shall within ten (10) days after the knowledge of such default, has been received by the said Robert Marr, or his representatives be mailed to the surety at its office in New York City.

SECOND. That the surety shall not be liable for any deposits made after any such default shall have come to the knowledge of the said Robert Marr or his representatives.

THIRD. That the said surety shall not be liable hereunder except for the loss of moneys belonging to the said Robert Marr, Treasurer, and which shall have been deposited with the aforesaid principal by the said Robert Marr, as Treasurer aforesaid, or to his credit as such Treasurer.

FOURTH. That no such suit, action or proceeding shall be brought or instituted against the surety upon or by reason of, any default, of the principal after the expiration of sixty days after such default, or, in any event, after the 22nd day of June, 1912.

FIFTH. That the surety shall have the right to

terminate its suretyship under this obligation by serving notice of its election so to do upon said "obligee" or his, or its lawful representatives, and thereupon the said surety shall be discharged from any and all liability hereunder for any default of the principal occurring after the expiration of thirty days after the service of such notice.

SIXTH. That, if the obligee shall at any time hold concurrently with this bond, or represent to the surety, in any statement to it, that it does or will at any time hold concurrently with this bond, or any other bond or collateral as guarantee of security from or on behalf of the principal, the obligee shall be entitled, in event of loss as hereinbefore stated, to claim hereunder only such proportion of the loss as the penalty of this bond bears to the sum of the penalties of all bonds and amount of collateral carried, or to be carried on the principal's behalf, and in no event shall the surety be liable for any sum in excess of the penalty of this bond.

STATE BANK OF TENINO,

By ISAAC BLUMAUER,

[Seal of State Bank of Tenino] President.

Attest: W. DEAN HAYS,

Cashier.

NATIONAL SURETY COMPANY,

By ROBT. A. HULBERT,

Resident Vice-President.

GEO. W. ALLEN,

Resident Assistant Secretary.

[Seal of National Surety Company]

Approved June 30, 1911.

JOHN M. WILSON,
County Attorney.

ROBT. MARR,
County Treasurer.

A. M. ROWE,
Chair. Board County Comm.

NATIONAL SURETY COMPANY.

Certificate of Appointment of Resident
Vice-President.

KNOW ALL MEN BY THESE PRESENTS,
That Robt. A. Hulbert has been and is hereby appointed Resident Vice-President of the National Surety Company, at Seattle, Washington, and as such Resident Vice-President has full power and authority to sign and execute on behalf of the Company any and all bonds, and all bonds signed by him, when sealed and attested by the Secretary, an Assistant Secretary, or a Resident Assistant Secretary, shall be as valid and binding upon the Company as if said bonds had been signed by the President and duly sealed and attested.

Said appointment is made under and by authority of a certain By-Law adopted by the Board of Directors of said National Surety Company at a regular meeting duly called and held on the sixth day of February, 1900, a certified copy of which is hereto attached, and is subject to revocation as therein provided.

IN TESTIMONY WHEREOF, the National Surety Company has caused these presented to be signed by its Second Vice-President, and its cor-

porate seal to be hereto affixed, duly attested by its Assistant Secretary, this 23d day of February, A. D. 1907.

[Seal]

BALLARD McCALL,

2d Vice-President.

Attest: GILBERT CONGDON,

Assistant Secretary.

State of New York,

County and City of New York,—ss.

On this 23d day of February, A. D. 1907, before me appears Ballard McCall, 2d Vice-president of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn says that he is 2d Vice-president of the National Surety Company; that he knows the corporate seal of the company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by order of the Board of Directors of said company; and that he signed said instrument as 2d Vice-president of said company by like authority; The said Ballard McCall further says that he is acquainted with Gilbert Congdon, and knows him to be Asst. Secretary of said company; that the signature of said Gilbert Congdon subscribed to the said instrument, is the genuine handwriting of the said Gilbert Congdon and was thereto subscribed by like order of the said Board of Directors.

[Seal]

R. W. MYERS,

Notary Public.

COPY OF BY-LAW.

BE IT REMEMBERED, that at a meeting of the Board of Directors of the National Surety Company,

duly called and held on the Sixth day of February, 1900, a quorum being present, the following By-law was adopted:

“Article XII, Section 1: The President, Vice President, or Second Vice President may from time to time appoint Resident Vice-Presidents, Resident Assistant-Secretaries and Attorneys in Fact, to represent and act for and on behalf of the Company; and either the President, Vice President, Second Vice-President, the Board of Directors, or the Executive Committee may, at any time, remove any such Resident Vice-President, Resident Assistant Secretary or Attorney in Fact, and revoke the power and authority given him.

Sec. 2: Resident Vice-Presidents. Resident Vice-Presidents shall have power and authority to sign and execute on behalf of the company any and all bonds, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and to bind the company thereby as fully and to the same extent as the President could bind it.”

State of New York,

City and County of New York,—ss.

I, Gilbert Congdon, Asst. Secretary of the National Surety Company, do hereby certify that the above and foregoing is a full, true and correct copy of a By-law adopted by the Board of Directors of said Company, at a meeting held on the sixth day of February, 1900, as the same appears upon the records of the company now in my possession and custody as Asst. Secretary.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said company at the city of New York this 23d day of February, A. D. 1907.

[Seal]

GILBERT CONGDON,
Assistant Secretary.

State of New York,
City and County of New York,—ss.

I, Wm. I. Hawks, Assistant Secretary of the National Surety Company, do hereby certify that the above and foregoing is a true and correct copy of an instrument executed by said National Surety Company on the 23d day of February A. D. 1907, which is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said company at the City of New York this 6th day of April A. D. 1911.

W. I. HAWKS,
Assistant Secretary.

[Seal of National Surety Co.]

NATIONAL SURETY COMPANY.

Certificate of Appointment of Resident Assistant Secretary.

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KNOW ALL MEN BY THESE PRESENTS, That George W. Allen has been and is hereby appointed Resident Assistant Secretary of the National Surety Company at Seattle, Washington, and as such Resident Assistant Secretary has power and authority to seal and attest on behalf of the company any and all, bonds, and all bonds sealed and attested by him, when signed by the President, Vice President,

Second Vice President, or a Resident Vice-President, shall be as valid and binding upon the company as if said bonds had been sealed and attested by the Secretary.

Said appointment is made under and by authority of a certain By-law adopted by the Board of Directors of said National Surety Company at a regular meeting duly called and held on the Sixth day of February, 1900, a certified copy of which is hereto attached, and is subject to revocation as therein provided.

IN TESTIMONY WHEREOF, The National Surety Company has caused these presents to be signed by its Second Vice-president, and its corporate seal to be hereto affixed, duly attested by its Assistant Secretary, this eleventh day of October A. D. 1906.

BALLARD McCALL,
President.

Attest: GILBERT CONGDON,
Assistant Secretary.

[Corporate Seal]

State of New York,
City and County of New York,—ss.

On this eleventh day of October, A. D. 1906, before me appears Ballard McCall, Second Vice-president of the National Surety Company, with whom I am personally acquainted, who, being by me duly sworn, says, that he is 2d Vice-president of the National Surety Company; that he knows the corporate seal of the company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed

by order of the Board of Directors of said company, and that he signed said instrument as Second Vice-president of said company, by like authority. The said Ballard McCall further says that he is acquainted with Gilbert Congdon and knows him to be the Assistant Secretary of said company; that the signature of said Gilbert Congdon subscribed to the said instrument, is in the genuine handwriting of the said Gilbert Congdon and was thereto subscribed by like order of the said Board of Directors.

[Notarial Seal] MARGARETTA CROOKE,
Notary Public.

Filed July 8, 1911. D. G. Parker, Clerk.

[Endorsed]: Depository Bond. Executed June 22d, 1911. No. 1783. United States District Court, Western District of Washington. Nat. Surety Co. vs. Blumauer et al. Plaintiff's Exhibit No. 1. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 1. Filed Apr. 5, 1917. F. D. Monckton, Clerk.

**Plaintiff's Exhibit No. 2—Indemnity Agreement,
June 22, 1911, Between Isaac Blumauer et al.
and National Surety Co.**

INDEMNITY CONTRACT FOR BOND No.
596,917.

NATIONAL SURETY COMPANY.

THIS AGREEMENT WITNESSETH, That,
Whereas, we the undersigned have requested the

National Surety Company, a corporation under the laws of the State of New York (hereinafter called the Company), to sign and execute a certain bond or undertaking in the penalty of Five Thousand Dollars (\$5,000.00) in behalf of the State Bank of Tenino in favor of the Treasurer of Thurston County, Washington, effective June 22, 1911, covering deposits of the said Treasurer in said Bank reference to which bond or undertaking is hereby made for the purpose of certainty and a copy of which instrument is or may be hereto attached, and

WHEREAS, The Company has signed and executed, or is about to sign and execute, the said instrument upon condition of the execution and delivery thereof and upon the security and indemnity hereby and herein provided,

NOW, THEREFORE, In consideration of the premises and of the sum of One Dollar in hand paid to us by the Company, the receipt whereof is hereby acknowledged, we, the undersigned, hereby covenant and agree with the Company, its successors and assigns, in manner following:

First: That we will pay in cash to the Company at its principal offices in the City of New York, or to such agent or representative of the company as the company may in writing designate, the sum of twenty-five and no/100 (\$25.00) dollars, which is agreed by the undersigned to be the company's compensation for the accommodation afforded the undersigned by the execution of said instrument by the company, said sum to be paid to the company annu-

ally in advance on the twenty-second day of June in each and every year during the time the company shall be and continue liable upon the said instrument, and until the company shall have been fully discharged and released from any and all liability upon the said instrument, and all matters arising therefrom, and until there shall have been furnished to the Company, at its principal offices in the City of New York, due and satisfactory proof by evidence legally competent, of such discharge and release.

Second: That we will at all times indemnify and keep indemnified the company, and hold and save it harmless from and against any and all, demands, liabilities, loss, damage, or expense of whatsoever kind of nature, including counsel and attorney's fees, which it shall at any time sustain or incur by reason, or in consequence of having executed said instrument; and that whenever any claim or claims shall have been made upon the Company under the said instrument, if in the judgment of the Company it is determined that such claim or claims should be paid, we covenant, promise and agree to pay over in cash to the company upon its demand therefor, the amount or amounts of said claim or claims; and if the company deny liability concerning any claim or claims and suit or suits be brought against the company under said instrument to recover the amount of said claim or claims, or any other proceeding or proceedings be taken thereon involving the company, whether the suits and proceedings be against the Principal named in the said instrument, and the company jointly, or against the company

alone, we covenant and agree to defend said suits and proceedings to a conclusion at our own expense, or to permit the company, if it so elect, to place the defense of such suits and proceedings in the hands of its own attorneys or counsel, in which latter event we covenant, promise and agree to pay over to the company upon its demand such sum or sums of money as may be required to retain said attorneys or counsel and to defray the expenses of conducting the defense of said suits and proceedings; and further, we covenant and agree to satisfy and discharge any and all judgments recovered against the Company under said instrument as soon as the same shall be entered or docketed unless an appeal be taken and bond or bonds to secure or stay the collection of such judgment or judgments be procured by the undersigned and filed as required by law, and if final judgment be recovered or entered against the Company after the decision of such appeal, we covenant and agree to forthwith satisfy and discharge every such final judgment without requiring the Company to take any steps whatsoever thereon; and should judgment be entered against the principal in said bond and the Company, or against the Company alone, in either event, should the undersigned not procure an appeal to be taken, and furnish bond or bonds to secure, supersede or stay the collection of such judgment, the Company may, if it elect, pay said judgment, whereupon we agree to forthwith repay to the Company, the amount of said judgment so paid together with legal interest thereon from the date of payment to the date of such repayment; that we will

pay over, reimburse and make good to the company, its successors and assigns, all sums and amounts of money not hereinbefore provided for, which the company or its representatives shall pay, or cause to be paid, or become liable to pay under its obligation upon said instrument, or as charges and expenses of whatsoever kind or nature, including counsel and attorneys' fees by reason of the execution thereof, or in connection with any litigation, investigation or other matters connected therewith, such payment to be made to the Company as soon as it shall have become liable therefor, whether it shall have paid out said sum or any part thereof, or not.

That in any settlement between us and the Company, the vouchers or other proper evidence showing payment by the company of any such liability, loss, damage, or expense, shall be *prima facie* evidence against us of the fact and amount of our liability to the Company, provided that such payment shall have been made by the Company in good faith, believing that it was liable therefor.

Third: That in case any action at law, suit in equity, or other proceeding be commenced or notice of such action, suit or proceeding be served upon the undersigned, affecting the liability of the Company upon said instrument or growing out of any matter connected herewith, or on account of which the said instrument was given, we will immediately so notify the company at its principal office in the City of New York.

Fourth: The Company may, at any time hereafter take such steps as it may deem necessary or proper

to obtain its release from any and all liability under the said instrument, or under any other instrument within the meaning of Section Fifth hereof, and to secure and further indemnify itself against loss, and all damages and expense which the Company may sustain or incur or be put to in obtaining such release, or in further securing itself against loss, shall be borne and paid by us.

Fifth: That no act or omission of the Company in modifying, amending, limiting or extending the instrument so executed by the Company shall in any wise affect our liability hereunder, nor shall we or any of us be released from this obligation by reason thereof; and we agree that the Company may alter, change, or modify, amend, limit or extend said instrument and may execute renewal thereof, or other and new obligation in its place or in lieu thereof, and without notice to us, notice being expressly waived, and in any such case we and each of us shall be liable to the Company as fully and to the same extent on account of any such altered, changed, modified, amended, limited or extended instrument, or such renewals thereof, or other or new obligations in its place or in lieu thereof, whenever and as often as made, as fully as if such instrument were described at length herein.

Sixth: It shall not be necessary for the Company to give us, or either of us, notice of any act, fact or information coming to the notice or knowledge of the Company concerning or affecting its rights or liability under any such instruments by it so executed, or our rights or liabilities hereunder, notice

of all such being hereby expressly waived.

Seventh: That this agreement shall bind not only the undersigned jointly and severally, but also our respective heirs, executors, administrators, successors and assigns (as the case may be), until the Company shall have executed a release under its corporate seal, attested by the signatures of its officers proper for the purpose.

Eighth: That these covenants as also all collateral securities or indemnity, if any, at any time deposited with or available to the Company concerning any bond or undertaking executed for or at the instance of us, or any of us, shall, at the option of the Company, be available in its behalf and for its benefit and relief as well concerning any or all former or subsequent bonds or undertakings executed for us, or at the instance of us, or any of us, as concerning the bond or undertaking such covenants, collateral securities or indemnity shall have been made, deposited or given.

Ninth: It is distinctly covenanted and agreed that it is the true *intent meaning* of the provisions of this instrument among other things, that immediately upon any default on the part of the principal of said bond in performing any of the obligations thereof, or immediately upon any claim being made upon the Company the undersigned shall pay over to and deposit with the Company in cash, the full amount of moneys, or the equivalent thereof, with accrued interest, if any, alleged by the holder of said bond to be in the hands of said principal or on deposit with

it belonging to such holder, up to but not exceeding the penalty of said bond.

IN TESTIMONY WHEREOF, We have hereunto set our hands and affixed our seals this 22d day of June, 1911.

ISAAC BLUMAUER, (Seal)
P. O. Address: Tenino, Wash.
T. F. MENTZER, (Seal)
P. O. Address: Tenino, Wash.
W. DEAN HAYS, (Seal)
P. O. Address: Tenino, Wash.
A. D. CAMPBELL,
DAVID COPPING,
Tenino, Wash.

STATE BANK OF TENINO,
ISAAC BLUMAUER,
President.

[Seal of Bank] W. DEAN HAYS,
Cashier.

State of Washington,
County of King,—ss.

On this 22d day of June, 1911, before me personally came Isaac Blumauer, T. F. Mentzer, W. Dean Hays, A. D. Campbell and David Copping, to me known and known to me to be the individuals described in and who executed the foregoing agreement, and each acknowledged that he executed the same.

[Notarial Seal of Geo. W. Allen]

GEO. W. ALLEN,
Notary Public in and for the State of Washington,
Residing at Seattle.

State of Washington,
County of Thurston,—ss.

On the 24th day of June, in the year 1911, before me personally came Isaac Blumauer, to me known who being by me duly sworn, did depose and say: That he resides in Tenino, Wash., that he is the President of the State Bank of Tenino, the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order.

[Notarial Seal of J. F. Cannon]

J. F. CANNON,

Notary Public in and for the State of Washington,
Residing at Tenino.

[Endorsed]: Indemnity Agreement. No. 1783. United States District Court, Western District of Washington. Nat. Surety Co. vs. Blumauer et al. Plaintiff's Exhibit No. 2. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 2. Filed Apr. 5, 1917. F. D. Monckton, Clerk.

Plaintiff's Exhibit 3—Letter, May 23, 1914, Allen to Hays.

[Letter-head of National Surety Company.]

May 23, 1914.

Mr. W. Dean Hays, Vice Prest.,
State Bank of Tenino,
Tenino, Washington.

My dear Dean:—

In reply to your esteemed favor of the 22d instant, herewith receipt covering premium. If Mr. Marr's term of office expired, and Mr. Britt was elected to succeed him, we should send you entirely new bond. If Mr. Britt otherwise succeeded Mr. Marr, it would not be necessary.

Please advise by return mail, so that we may know, and if necessary send you new bond.

With kindest personal regards, I remain

Very truly yours,

GEO. W. ALLEN,

Manager.

GWA/RW.

[Endorsed]: No. 1783. United States District Court, Western District of Washington. National Surety Co. vs. Blumauer et al. Plaintiff's Exhibit No. 3. Deft. Ex. "B." Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 3. Filed Apr. 5, 1917. F. D. Monekton, Clerk.

**Plaintiff's Exhibit 4—Letter, May 22, 1914, Hays to
Allen & Co.**

[Letter-head of State Bank of Tenino.]

Tenino, Wash., May 22, 1914.

Geo. W. Allen & Co.,

Alaska Bldg.,

Seattle, Wash.

My dear George:

Enclosed herewith is a draft for \$25.00 in payment for renewal of depository bond.

In this connection I desire to state that our county treasurer is Mr. W. H. Britt who succeeded Robert Marr, and if necessary please make an endorsement to that effect.

Thanking you for your attention in this matter, I am

Very truly yours,

STATE BANK OF TENINO,

W. DEAN HAYS,

V. President.

H/L—Enc. 2.

[Endorsed]: Plts. Ident. IV, 11/15/ 16. No. 1783. United States District Court, Western District of Washington. Nat. Surety Co. vs. Blumauer et al. Plaintiff's Exhibit No. 4. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 4. Filed Apr. 5, 1917. F. D. Monckton, Clerk.

**Plaintiff's Exhibit 5—Letter, May 25, 1914, Hays to
Allen & Co.**

[Letter-head of State Bank of Tenino.]

Tenino, Wash., May 25, 1914.

Geo. W. Allen & Co.,

Alaska Bldg.,

Seattle, Wash.

My dear George:

Your favor of the 23rd inst. enclosing receipt for annual premium has been received and in connection therewith beg to state that Mr. W. H. Britt was elected to succeed Mr. Robert Marr at the election two years ago, hence I imagine that it is necessary for you to issue a new bond, which I trust you will do and forward to us, however, the same bond has been renewed once or twice since Mr. Britt assumed office.

Thanking you for your attention in this matter,
I am

Very truly yours,

STATE BANK OF TENINO,

W. DEAN HAYS,

V. President.

H/L.

[Endorsed]: Plts. Ident. V, 11/15/16. No. 1783.
United States District Court, Western District of
Washington. Nat. Surety Co. vs. Blumauer et al.
Plaintiff's Exhibit No. 5. Filed in the U. S. District
Court, Western Dist. of Washington, Southern Di-
vision. Nov. 15, 1916. Frank L. Crosby, Clerk.
By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 5. Filed Apr. 5, 1917. F. D. Monckton, Clerk.

Plaintiff's Exhibit 6—Letter, May 26, 1914, Allen to Hays.

[Letter-head of National Surety Company.]

May 26, 1914.

Mr. W. Dean Hays, Vice President,
State Bank of Tenino,
Tenino, Wash.

My dear Dean:—

Acknowledging your esteemed favor of the 25th instant, we enclose herewith new bond duly executed in favor of W. H. Britt, County Treasurer of Thurston County, Washington, effective June 22d, 1914. We think it is best that a new bond be filed as of the anniversary date of the former bond, and we will, therefore, require new application signed by your good institution, which kindly let us have, together with copy of your latest financial statement, by return mail. It will also be necessary that the enclosed release be signed by the Treasurer covering the former bond, as the same by its terms is continuous, and we must have this release to enable our home office to relieve our account of future premiums.

Thanking you to let us have the application and release promptly, and with kindest regards, I remain,

Very truly yours,

GEO. W. ALLEN,
Manager.

GWA. RW.

[Endorsed]: Plt. Ident. VI. 11/15/16. Deft. Ex. "D." No. 1783. United States District Court, Western District of Washington. National Surety Co. vs. Blumauer et al. Plaintiff's Exhibit No. 6. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals, for the Ninth Circuit. Plaintiff's Exhibit 6. Filed Apr. 5, 1917. F. D. Monekton, Clerk.

Plaintiff's Exhibit 7—Letter, June 25, 1914, Allen to Hays.

[Letter-head of National Surety Company.]

June 25th, 1914.

Mr. W. Dean Hays, Vice President,
State Bank of Tenino,
Tenino, Washington.

Dear Dean:—

Referring to our letter of May 2nd, kindly let us have application covering bond which accompanied ours of that date, and also copy of latest financial statement of your good institution.

The application we forwarded you, no doubt, has been misplaced, and we therefore enclose new application, and will ask that you kindly let us have the same by return mail, obliging.

Thanking you, and with personal regards, I remain,

Very truly yours,

GEO. W. ALLEN,

Manager.

GWA/RW.

[Endorsed]: Plts. Ident. VII. 11/15/16. Deft. Ex. "E." No. 1783. United States District Court, Western District of Washington. National Surety Co., vs. Blumauer et al. Plaintiff's Exhibit No. 7. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals, for the Ninth Circuit. Plaintiff's Exhibit 7. Filed Apr. 5, 1917. F. D. Monckton, Clerk.

**Plaintiff's Exhibit 8—Letter, May 26, 1914, Britt to
State Bank of Tenino.**

[Letter-head of Thurston County Treasurer.]

Olympia, Wash., May 26/14.

State Bank,

Tenino, Wash.

Gentlemen:

I just received renewal certificate from National Insurance Co., which runs to Robt. Marr, which should not be so, I am of the opinion, that, as the bond is made to Robt. Marr as County Treasurer, it would be much better to have a New Bond made in my name as County Treasurer.

Please take this matter up at once and have the change made as soon as possible.

I return the certificate just received herewith.

Yours truly,

W. H. BRITT.

[Endorsed]: Plts. Ident. 8. 11/15/16. Deft. Ex. "G." No. 1783. United States District Court,

Western District of Washington. National Surety Co. vs. Blumauer et al. Plaintiff's Exhibit No. 8. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 8. Filed Apr. 5, 1917. F. D. Monckton, Clerk.

Plaintiff's Exhibit 9—Letter, May 29, 1914, Hays to Britt.

May 29, 1914.

Mr. W. H. Britt, Treas.,

Olympia, Wash.

My dear Mr. Britt:

You will herewith please find Depository Bond of the National Surety Company of New York in your favor for \$5000.00 maturing June 22, 1915, to take the place of the one heretofore issued to Robert Marr as treasurer.

You will *also two blank* releases for the former bond which you will kindly sign and return to us.

Thanking you for your attention to this matter and trusting that you will find everything satisfactory, I am,

Very truly yours,

STATE BANK OF TENINO,

W. DEAN HAYS,

H/L—Enc. 3.

V. President.

[Endorsed]: Plts. Ident. 9. 11/15/16. H. No. 1783. United States District Court, Western Dis-

trict of Washington. National Surety Co. vs. Blu-mauer et al. Plaintiff's Exhibit No. 9. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 9. Filed Apr. 5, 1917. F. D. Monckton, Clerk.

**Plaintiff's Exhibit 10—Depository Bond, June 22,
1914, Between State Bank of Tenino et al. and
W. H. Britt.**

DEPOSITORY BOND.

KNOW ALL MEN BY THESE PRESENTS:
That the State Bank of Tenino as Principal, and National Surety Company, a corporation organized and existing under and by virtue of the Laws of the State of New York, and authorized to do business in the State of Washington, as surety, are firmly held and bound unto W. H. Britt, Treasurer of the County of Thurston, State of Washington in the sum of Five Thousand Dollars (\$5,000.00) for the payment of which, well and truly to be made, we hereby bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents.

Dated this 22nd day of June, A. D. 1914.

WHEREAS, the said Principal, the State Bank of Tenino, has been designated by W. H. Britt, Treasurer of Thurston County, as a depository of the current funds in the hands or possession of said Treasurer W. H. Britt to be deposited in the said Bank; the amount whereof shall be subject to withdrawal

or diminution by said Treasurer, as the requirements of said County shall demand, and which amount may be increased or decreased as the said Treasurer may determine, and

WHEREAS, the said Bank, in consideration of such deposit and of the privilege of keeping same, has agreed to pay the County of Thurston State of Washington, interest on said sum upon the average daily balance the said Bank shall have on deposit for the month, or any fraction thereof next preceding the crediting of said interest, which interest shall be computed and credited to the account of W. H. Britt, Treasurer of said County of Thurston, State of Washington, and shall become thenceforth a part of such deposit.

NOW THEREFORE, if the said The State Bank of Tenino, shall at the beginning of every month render to the Treasurer of Thurston County, State of Washington, a statement showing the daily balance of such County moneys held by it during the month next preceding and interest thereon, and how the same has been credited, and shall well and truly keep all such sums of money so deposited, or to be deposited, as aforesaid, and the interest thereon, subject at all times to the check and order of W. H. Britt, Treasurer as aforesaid, and shall pay over the same, or any part thereof, upon the check or written demand of said Treasurer and to his successor in office, and shall calculate, credit and pay such interest, as aforesaid, and shall in all respects save and keep the said County, and the County Treasurer of the said County harmless and indemnified for and by reason

of the making of said deposit or deposits, and shall in all respects comply with House Bill No. 90 entitled "An Act regulating the keeping and deposit of public funds in banks by the several treasurers of the State of Washington," passed by the Legislature of the State of Washington at its tenth regular session, in the year 1907, then this obligation shall be void and of no effect; otherwise to be and remain in full force and effect.

PROVIDED:

1. That the National Surety Company, surety on said bond, shall have the right to terminate its liability under this obligation by serving notice of its election so to do upon the said Treasurer and the said National Surety Company shall be discharged from any and all liability hereunder for any default of the said The State Bank of Tenino, principal, occurring after the expiration of thirty (30) days after the service of such notice.

2. The surety shall only be liable for such proportion of the total loss or damage sustained by said Obligee by reason of any default of the Principal embraced within the terms of this bond as the penalty of this bond shall bear to the total sum of all bonds and securities which may be given to secure the deposits referred to, but in no event shall the Surety hereunder be liable for any sum in excess of the penalty of this bond.

IN WITNESS WHEREOF we have hereunto affixed our corporate seal and caused this bond to be duly signed by our respective officers, the date and

year first hereinbefore written.

THE STATE BANK OF TENINO,

By ISAAC BLUMAUER,

President.

Attest: W. DEAN HAYS,

Cashier.

[Seal of Bank]

NATIONAL SURETY COMPANY,

By GEO. W. ALLEN,

Resident Vice-President.

Attest: E. P. WELCH,

Resident Asst. Secretary.

O. K.—THOMAS O'LEARY,

Pros. Atty.

Approved.

A. M. ROWE,

Chairman of Board.

Filed in Superior Court, Thurston County, Wash.,
Jun. 13, 1914. D. G. Parker, Clerk.

[Endorsed]: Depository Bond. Executed June
22d, 1914. No. 1783. United States District Court
Western District of Washington. Nat. Surety Co.
vs. Blumauer et al. Plaintiff's Exhibit No. 10. Filed
in the U. S. District Court, Western Dist. of Wash-
ington, Southern Division. Nov. 15, 1916. Frank
L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the
Ninth Circuit. Plaintiff's Exhibit 10. Filed Apr.
5, 1917. F. D. Monckton, Clerk.

Plaintiff's Exhibit 11—Release, Treasurer, Thurston County, Washington, to National Surety Co. of New York.

National Surety Company,
New York.

Gentlemen:—

As surety on that certain depository bond, dated June 22d, 1911, in behalf of The State Bank of Tenino, in favor of Robert Marr, Treasurer, Thurston County, Washington, in the penalty of \$5,000, you are released from further liability thereunder, from and after the 22d day of June, 1914.

W. H. BRITT,
Treasurer, Thurston County, Wn.

WITNESS:

[Endorsed]: Plts. Iden. 11, 11/15/16. No. 1783. United States District Court, Western District of Washington. Nat. Surety Co. vs. Blumauer et al. Plaintiff's Exhibit No. 11. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 11. Filed Apr. 5, 1917. F. D. Monckton, Clerk.

**Plaintiff's Exhibit No. 12—Commissioner's Minutes,
January 3, 1911.**

COMMISSIONER'S MINUTES.

Tuesday, January 3, 1911.

The County Treasurer, in compliance with Chap-

ter 51, Laws of 1907, filed designations of depositories for County Funds for 1911 as follows:

Capital National Bank, \$37,500

State Bank of Tenino, \$15,000

Said amounts to be the maximum amounts to be deposited in said banks. The action of the Treasurer was approved and the communication ordered placed on file.

CHAMPION B. MANN,
Chairman.

R. A. CRUIKSHANK,
Clerk.

[Endorsed]: Plts. Ident. 12. 11/15/16. No. 1783. United States District Court, Western District of Washington. Nat. Surety Co. vs. Blumauer et al. Plaintiff's Exhibit No. 12. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberg, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 12. Filed Apr. 5, 1917. F. D. Monckton, Clerk.

**Plaintiff's Exhibit No. 13—Commissioner's Minutes,
January 8, 1912.**

COMMISSIONER'S MINUTES.

Monday, January 8th, 1912.

The County Treasurer, in compliance with Chapter 51, Laws of 1907, filed designations of depositories for County Funds for 1912 as follows:

Capital National Bank, \$37,500

Olympia National Bank, \$27,000

State Bank of Tenino, \$15,000

The action of the Treasurer was approved by the Board and the communication placed on file.

A. M. ROWE,
Chairman.

R. A. CRUIKSHANK,
Clerk.

[Endorsed]: Plts. Ident. 13. 11/15/16. No. 1783. United States District Court, Western District of Washington. Nat. Surety Co. vs. Blumauer et al. Plaintiff's Exhibit No. 13. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 13. Filed Apr. 5, 1917. F. D. Monckton, Clerk.

**Plaintiff's Exhibit No. 14—Commissioner's Minutes,
January 11, 1913.**

COMMISSIONER'S MINUTES.

Saturday, January 11, 1913.

W. H. Britt, County Treasurer-elect, filed his designations of depositories of County Funds as follows:

Capital National Bank, \$37,500

Olympia National Bank, \$37,500

State Bank of Tenino, \$15,000

A. M. ROWE,
Chairman.

R. A. CRUIKSHANK,
Clerk.

[Endorsed]: Plts. Ident. 14. 11/15/16. No. 1783. United States District Court, Western District of Washington. Nat. Surety Co. vs. Blumauer et al. Plaintiff's Exhibit No. 14. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 14. Filed Apr. 5, 1917. F. D. Monckton, Clerk.

**Plaintiff's Exhibit No. 15—Commissioner's Minutes,
January 12, 1914.**

COMMISSIONER'S MINUTES.

Monday, January 12, 1914.

In compliance with Chapter 51, R. & B. Code, the Treasurer filed his designations of depositories of County Funds as follows:

Capital National Bank, \$37,500

Olympia National Bank, \$37,500

State Bank of Tenino, \$15,000

On motion, action of Treasurer was approved by the Board.

A. M. ROWE,
Chairman.

R. A. CRUIKSHANK,
Clerk.

[Endorsed]: Plts. Ident. 15. 11/15/16. No. 1783. United States District Court, Western District of Washington. Nat. Surety Co. vs. Blumauer et al. Plaintiff's Exhibit No. 15. Filed in the U. S. District Court, Western Dist. of Washington, Southern

120 *National Surety Company vs.*

Division. Nov. 15, 1916. Frank L. Crosby, Clerk.
By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the
Ninth Circuit. Plaintiff's Exhibit 15. Filed Apr. 5,
1917. F. D. Monekton, Clerk.

Plaintiff's Exhibit No. 16—Copy of Account, Robt.

Marr Co. Treas.

ROBT. MARR CO., TREAS.

COPY OF ACCOUNT.

Date.	Checks in Detail.	Total Checks.	Deposits.	Balance.
1911				
June 20	Balance			9840 52
Aug. 11	418 24			9770 52
Sept. 2	969 50			11224 66
7	814 99		1454 14	15237 83
Oct. 11	301 60		4013 17	15174 15
18	65			15074 15
24	148 50			15073 —
26	45 15			14993 03
30		1131 70	63 68	14984 24
Nov. 21			100	14973 79
23			1 15	14793 79
Dec. 1		2000 19	79 97	14642 43
2	121		8 79	14641 83
5	324 18		10 45	14510 93
20	2		180	14400 93
22	145		151 36	14370 93
	1000		60	14361 93
	71 28		127 95	14090 73
1912			2 95	
Jan. 3	60		110	13765 73
8	175 46		30	13498 66
8	187 04		9	13433 86
10	249		79 57	12618 92
12	7 43		191 63	
13	130 26		75	
16	2 76		150	
19	103 65		100	
26	158 50		170 25	
Febr. 2	550		96 82	
" 20	85 46		64 80	
			814 94	

Isaac Blumauer et al.

Date.		Checks in Detail.		Total Checks.		Deposits.		Balance.		CO., TREAS.		Checks in Detail.		Total Checks.		Deposits.		Balance.	
1912																			
Oct.	17	Forward																	
"	17			128 75				12618 92											
"	19			27				11490 17											
"	21			383 75				12463 17											
"	23			5				12079 42											
"	28			40				12074 42											
"	29			123				12034 42											
"	30			17				11911 42											
Nov.	2			1 44				11894 42											
"	4			124 86				11892 98											
"	7			1119 70				11768 12											
"	11			157 50				10648 42											
"	12			6 59				10490 92											
"	13			39 66				10484 33											
"	20			44 74				10444 67											
"	21			99 92				10399 93											
"	26			204 75				10300 01											
Dec.	2			45 50				10095 26											
"	9			75				10049 76											
1913								9974 76											
Jan.	8			9974 76				000000 00											

[Endorsed]: No. 1783. United States District Court, Western District of Washington. Nat. Surety Co. v. Blumaer et al. Plaintiff's Exhibit No. 16. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 16. Filed Apr. 5, 1917. F. D. Monckton, Clerk.

Plaintiff's Exhibit No. 17—Copy of Account, W. H.

Britt Co., Treas.

W. H. BRITT CO., TREAS.

"COPY OF ACCOUNT."

Date.	Checks in Detail.	Total Checks.	Deposits.	Balance.	Date.	Checks in Detail.	Total Checks.	Deposits.	Balance.
1913					1913				
Jan. 15			9974 76	9974 76	July 10	Forward			14521 16
27				8573 90	12		84 47		14436 69
Febr. 1	1400 86				Oct. 7		25 62		14411 07
" 1	155 75				9		65		14346 07
" 4	530 65				10		526 92		13819 15
" 7			12 91	7887 50	11		29 35		13789 80
" 13			1418 70	9382 11	24		61 79		13728 01
" 14	12 91			9369 20	Nov. 3		198 29		13529 72
Mar. 3			1905 46	11274 66	6		205		13324 72
" 7	1 34			11273 32	8		122 16		13202 56
" 8	193 10			11085 22	11		6 56		13196
" 10	85			10995 22	12		199 50		12996 50
" 11	6274			4721 22	Dec. 1		1 26		12995 24
" 14	99 75			4621 47	5		168 43		12826 81
" 18	28 30			4593 17	6		69 99		12756 82
" 24	23 74			4569 43	9		11 24		12745 58
" 25	76			4493 43	12		1 05		12744 53
" 27	1 51			4491 92	13		1 30		12743 23
April 7	5 30			4486 62	20		83 29		12659 94
" 14	81		808 96	5214 58	24		247 29		12412 65
May 6		94	5219 58	10434 16	31		120		12292 65
				10433 22	1914				
" 10	11 90			10421 32	Jan. 2		65		12227 65
" 15	172 83			10248 49	3		94 15		12133 50
" 24	72			10176 49	7		11 40		12122 10
June 10	164 70			10011 79	10		1 15		12120 95
20			4950	14961 79	12		31 86		12089 09
July 10	440 63			14521 16	20		334 06		11755 03

Isaac Blumauer et al.

123

Date. 1914	Checks in Detail.	Total Checks.	Deposits.	W. H. BRITT		CO., TREAS.	Date.	Checks in Detail.	Total Checks.	Deposits.	Balance.
				Balance.	1914						
Jan. 20	Forward			11755 03	May 16	Forward					14972 26
23		8 85		11746 18	June 8			6 02			14966 24
30		83 91		11662 27				1 97			14964 27
Febr. 2		35		11627 27				7 33			14956 94
4		203 45		11303 82				20 10			14936 84
5		12 35		11351 47				99			14935 85
9		11 93		11339 54	Aug. 27			101 09			14834 76
10		2 10		11337 44				28 25			14806 51
17		76 50		11260 94				274 18			14532 33
21		94		11260	Sept. 1			275 05			14257 28
24		84		11259 16	2			586 46			13670 82
27		1 25		11257 91	3			10 41			13660 41
March 3		78		11257 13	8			612 24			13048 17
6		89		11256 24				5 22			13042 95
7		93 70		11162 54	14			81 25			12961 70
14			836 34	11998 88	15			116 89			12844 81
16		1 73		11997 15	17			21 23			12823 58
19			2497 78								
20		596 83		15091 76							
23		64		15091 12							
24		60		15090 52							
28		1 79		15088 73							
31		1 15		15087 58							
April 8		33 75		15053 83							
17		40 47		15013 36							
May 16		55		15012 81							
		40 55		14972 26							

[Endorsed]: Plts. Ident. 17. 11/15/16. No. 1783. United States District Court, Western District of Washington. Nat. Surety Co. vs. Blumauer et al. Plaintiff's Exhibit No. 17. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Plaintiff's Exhibit 17. Filed Apr. 5, 1917. F. D. Monekton, Clerk.

**Defendant's Exhibit "A"—Application by a Bank or
Trust Company for Depository Bond.**

Agency Bond No.

NATIONAL SURETY COMPANY OF NEW
YORK.

596917

Application by a Bank or Trust Company for a
Depository Bond.

NATIONAL SURETY COMPANY:

Application is hereby made by the undersigned for
a bond, the amount and tenor of which are herein set
forth.

1. Name and location of Bank or Trust Company.
(Give correct corporate title.)—State Bank of
Tenino, Tenino, Wash.
2. Name of Obligee to whom bond is to run.—
Treasurer, Thurston County, Wash.
3. Amount of bond—\$5,000.00.
4. Maximum amount of deposits bond is required
to secure—\$5,000.00.
5. Date from which bond is required—June 22,
1911.
6. Date upon which bond is to terminate—June 22,
1912.
7. Do you agree to pay \$25.00 premium annu-
ally? Yes.
8. When was Bank or Trust Company incorpo-
rated, and under the laws of what State was
the incorporation had? 1906; Washington.
9. Date of beginning business—May 1, 1906.
10. Authorized capital—\$10,000.00.

11. Amount of Stockholders' liability, if a State Bank—\$20,000.00.
12. Paid in capital—\$10,000.00.
13. Attach hereto last published financial statement, and list of officers and directors.
13. When was the last examination made by National or State Bank Examiner? Feb. 6, 1911.
15. Give names and titles of the officers who give continuous personal attention to the affairs of the Bank or Trust Company:

Names	Titles
Isaac Blumauer,	President.
T. F. Mentzer,	Vice-president.
W. Dean Hays,	Cashier.

16. By whom are the loans of the Bank or Trust Company directly authorized.—President and Cashier.

This Agreement Made between State Bank of Tenino (hereinafter called the Depository), and the NATIONAL SURETY COMPANY (hereinafter called the Company),

WITNESSETH:

Whereas, the Company has executed, or is about to execute, for the Depository, the Bond described in the foregoing application, which application is hereby referred to and made a part of this Agreement,

Now, Therefore, In consideration of the execution of such bond and the sum of One Dollar paid to the Depository by the Company, the Depository covenants and agrees with the Company as follows:

1. That all declarations and answers made in the foregoing application are true, and that the

same are made for the purpose of inducing the Company to execute the Bond applied for without demanding collateral security from the Depository.

2. That the Depository will pay to the Company, or its duly authorized Agent, the premiums agreed in said application to be paid.
3. That the Depository will, at all times, indemnify and keep indemnified the Company, and save it harmless from and against all claims, demands, liabilities, costs, charges and expenses, of every kind and nature which it shall at any time sustain or incur and as well from or against all orders, judgments, and adjudications whatever by reason or in consequence of having executed said Bond, and will pay over, reimburse and make good to the Company, its successors and assigns, all sums and amounts of money to meet every claim, demand, liability, cost, charge, expense, suit, judgment or adjudication against it by reason of the execution of the Bond applied for, and before the Company shall be required to pay thereunder.
4. That the Depository will immediately notify the Company at its principal offices in the City of New York, of the making of any demand or the giving of any notice or commencement of any suit or proceeding, or the fixing of any liability which the Company may be called upon to discharge, by reason of the execution of said Bond.

5. That the Depository will, on request of the Company, procure the Company's discharge from liability under said Bond, and the Company shall at its option, have the right to the use of the Depository's name, and to all the rights and privileges of the Depository, and at any time shall have the right to be discharged from liability for the further default of the Depository, and to require the Depository to account and give new surety or sureties.
6. That vouchers or other evidence of payment by the Company in discharge of any liability under said Bond shall be *prima facie* evidence against the Depository of the fact and amount of the Depository's liability to the Company.
7. That the Company shall have the right to look to and rely upon the property of the Depository and its income and earnings, and to follow and recover out of the Depository's property now belonging to it, or which may hereafter belong to it, and the income and earnings thereof for anything due or to become due the Company under this Agreement, the execution of the said Bond by the Company being for the Depository's special benefit and protection of the Depository's property, its income and earnings.
8. That the acceptance of this Agreement, and of the Depository's agreement to pay premiums for the execution of said Bond, or the acceptance at any time by the Company of other security, shall not in any way abridge or limit the right of the Company to be subrogated to any right or remedy, or limit any right or rem-

edy which the Company might otherwise have, acquire, exercise or enforce, and the Company shall have every right and remedy which the individual surety acting without compensation would have.

In Witness Whereof, the Depository, by authority of its Board of Directors, or Trustees, has caused this agreement to be duly signed by its President, and Cashier or Secretary, and its corporate seal to be thereto affixed this nineteen day of June, 1911.

[Seal]

STATE BANK OF TENINO,

Tenino, Wash.

W. DEAN HAYS,

Cashier.

ISAAC BLUMAUER,

President.

Signed and sealed in the presence of

T. E. KIRKPATRICK.

[Endorsed]: Defts. Indent. 1, 11/15/16. National Surety Co., 346 Broadway, New York. Application for Depository Bond. No. 1783. United States District Court, Western District of Washington. Nat. Surety Co. vs. Blumauer et al. Defendants' Exhibit "A." Filed in the U. S. District Court, Western Dist. of Washington, Southern Division, Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit Defendants' Exhibit "A." Filed Apr. 5, 1917. F. D. Monckton, Clerk.

Defendant's Exhibit "B"—Application by a Bank or Trust Company for Depository Bond.

796575

NATIONAL SURETY COMPANY.**CAPITAL \$2,000,000.**

Application by a Bank or Trust Company for
Depository Bond.

NATIONAL SURETY COMPANY:

Application is hereby made by the undersigned for a bond, the amount and tenor of which are herein set forth.

1. Name and location of Bank or Trust Company.
(Give correct corporate title.)—State Bank of Tenino.
2. Name of Obligee to whom bond is to run—W. H. Britt, County Treasurer.
3. Amount of Bond—\$10,000.
4. Maximum amount of deposits bond is required to secure—\$10,000.
5. (a) Specify rate of interest to be paid 2%
(b) moneys covered by this bond.
6. Date from which bond is required—June 22, 1914.
7. Date upon which bond is to terminate—June 22, 1915.
8. Do you agree to pay \$50.00 premium annually—Yes.
9. When was Bank or Trust Company incorporated, and under the laws of what State was the incorporation had? July, 1907, Washington.

10. Date of beginning business—May, 1907. If re-organized, state when.
 11. Authorized capital—\$10,000.
 12. Amount of Stockholders' liability, if a State Bank—\$20,000.
 13. When was last dividend declared, paid and amount.
 14. When was the last examination made by National or State Bank Examiner? Jan. 27, 1914.
 15. Give names and title of the officers who give continuous or personal attention to the affairs of the Bank or Trust Company:
- | Names. | Titles. |
|----------------------------|------------|
| Isaac Blumauer, President. | President. |
| W. Dean Hays, | Cashier. |
16. By whom are the loans of the Bank or Trust Company directly authorized? Pres't and Cashier.
 17. The following is a true financial statement of said Bank or Trust Company, showing its resources and liabilities at the close of business on the 1st day of May, 1914.

RESOURCES.

*Loans and Discounts 61,268 07

*Amount of above loans to directors—none.

What amount secured by collateral.....\$9,099.73.

Amount of above loans to officers, not directors approved by directors—
none.....

.....
What amount secured by collateral.....

Overdrafts, Secured, \$.....; unse- cured \$.....	1,768 83
U. S. Bonds to secure Circulation.....	
Other stocks bonds and mortgages..	12,020 83
Banking House \$.....; Furniture and Fixtures \$.....	4,000
Other Real Estate owned.....	
Due from approved Reserve Agents \$..	
Due from other Banks and Bankers \$.	26,093 89
Checks and other cash Items \$.....	
Fractional currency, Legal Tender Notes,	
Specie, etc. \$.....	3,017 65
Total.....	\$108,169 27

Other Resources.....

Total Resources.....

LIABILITIES.

Capital Stock paid in.....	10,000
Paid in Surplus \$.....; Earned Sur- plus\$.....	
Undivided Profits.....	1,608 29
National Bank Notes outstanding.....	
Due to Banks.....\$.....	372 77
Individual Deposits subject to Check\$76,735.48	
Time Certificates of deposits \$ 4,274.24	
Savings Deposits\$11,735.69	
Other Deposits\$ 3,442.80	
Total.....	96,188 21
Dividends unpaid	
Notes and Bills Rediscounted.....	
Bills Payable	
Other Liabilities.....	
Total Liabilities.....	\$108,169 27

18. State rate of interest paid on various classes of deposits—2%.

19. Specify Town, City, County and other public or special deposits:

Depositor.	Amount Deposited	Rate Int. %	Surety Bond.	Amt. of Bond.	Date of Expiration.
Tenino,	\$ 3,000	no			
County,	15,000	2			

20. Do officers and employees give Corporate Surety Banks? No.

Give name of Surety—Expiration date.

21. Does Bank carry Burglary Insurance? Yes.
Amount, \$5,000. Name of Company—National.
Expiration—July 29, 1915.

This Agreement Made between State Bank of Tenino (hereinafter called the Depository), and the NATIONAL SURETY COMPANY (hereinafter called the Company),

WITNESSETH:

Whereas, the Company has executed or is about to execute, for the Depository, the Bond described in the foregoing application, which application is hereby referred to and made a part of this Agreement.

Now, Therefore, In consideration of the execution of such bond and the sum of One Dollar paid to the Depository of the Company, the Depository covenants and agrees with the Company as follows:

1 That all declarations and answers made in the foregoing application are true, and that the same are made for the purpose of inducing the Company to execute the Bond applied for without demanding collateral security from the Depository.

2. That the Depository will pay to the Company, or its duly authorized Agent, the premiums agreed in said application to be paid.
3. That the Depository will, at all times, indemnify and keep indemnified the Company, and save it harmless from and against all claims, demands, liabilities, costs, charges, and expenses, of every kind and nature which it shall at any time sustain or incur and as well from or against all orders, judgments—and—adjudications whatever by reason or in consequence of having executed said Bond, and will pay over, reimburse and make good to the Company, its successors and assigns, all sums and amounts of money to meet every claim, demand, liability, cost, charge, expense, suit, judgment or adjudication against it by reason of the execution of the Bond applied for and before the Company shall be required to pay thereunder.
4. That the Depository will immediately notify the Company at its principal offices in the City of New York, of the making of any demand or the giving of any notice or the commencement of any suit or proceeding, or the fixing of any liability which the Company may be called upon to discharge, by reason of the execution of said Bond.
5. That the Depository will, on request of the Company, procure the Company's discharge from liability under said Bond, and the Company shall, at its option, have the right to the use of the Depository's name, and to all the rights and

privileges of the Depository, and at any time shall have the right to be discharged from liability for the further default of the Depository, and to require the Depository to account for and give new surety or sureties.

6. That vouchers or other evidence of payment by the Company in discharge of any liability under said Bond shall be *prima facie* evidence against the Depository of the fact and amount of the Depository's liability to the Company.
7. That the Company shall have the right to look to and rely upon the property of the Depository and its income and earnings, and to follow and recover out of Depository's property now belonging to it, or which may hereafter belong to it, and the income and earnings thereof for anything due or to become due the Company under this Agreement, the execution of the said Bond by the Company being for the Depository's special benefit and protection of the Depository's property, its income and earnings.
8. That the acceptance of this Agreement, and of the Depository's agreement to pay premiums for the execution of said Bond, or the acceptance at any time by the Company of other security, shall not in any way abridge or limit the right of the Company to be subrogated to any right or remedy, or limit any right or remedy which the Company might otherwise have, acquire, exercise or enforce, and the Company shall have every right and remedy which the

individual surety acting without compensation would have.

In Witness Whereof the Depository, by authority of its Board of Directors, or Trustees, has caused this agreement to be duly signed by its. President, and. Cashier or Secretary, and its corporate seal to be thereto affixed this 3d day of May, 1914.

(Affix Corporate Seal)

STATE BANK OF TENINO.

(Give Name of Bank.)

By ISAAC BLUMAUER,

President.

Attest: W. DEAN HAYS,

In presence of

Cashier.

[Endorsed]: Defts. Ident. 2. 11/15/16. No. 1783. United States District Court, Western District of Washington. Nat. Surety Co. vs. Blumauer et al. Defendants' Exhibit No. "B." Filed in the U. S. District Court, Western Dist. of Washington, Southern Division, Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit "B." Filed Apr. 5, 1917. F. C. Monckton, Clerk.

**Defendants' Exhibit "E"—Letter, March 8, 1913,
Mentzer to Blumauer.**

[Letter-head of Mentzer Brothers' Lumber
Company.]

Tacoma, Washington, March 8th, 1913.

Mr. Isaac Blumauer
President State Bank,
Tenino, Wash.

Dear Sir:

I hereby tender my resignation as a member of the Board of Directors of the State Bank of Tenino—and desire you to present my resignation at the first meeting of the Board of Directors held hereafter.

Very respectfully,

T. F. MENTZER.

[Endorsed]: Defts. Indent. "E." 11/15/16. No. 1783. United States District Court, Western District of Washington. Nat. Surety Co., vs. Blumauer et al. Defendants' Exhibit "E." Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendants' Exhibit "E." Filed Apr. 5, 1917. F. D. Monckton, Clerk.

**Defendants' Exhibit "F"—Letter, March 8, 1913,
Mentzer to Blumauer.**

[Letter-head of Mentzer Brothers' Lumber
Company.]

Tacoma, Washington, March 8, 1913.

Mr. Isaac Blumauer,
Pres. State Bank,
Tenino, Wash.,

Dear Sir:

Inclosed herewith I send you my resignation as director of the State Bank. This is in accordance with my intention announced to you last January. In accordance with an agreement understood at the time of the organization of the Bank. I had offered my stock to Mr. Hays, and now offer the same to you—it is for sale. If I can not find a purchaser for it, then you—I mean the Stockholders—may be under the necessity of amending the By laws so as to reduce the number of Directors. The Bank ought to be organized with new blood and new capital. I am willing to step down and out as I do not think I am adding any strength to it at the present time.

Very Truly,

T. F. MENTZER.

[Endorsed]: No. 1783. United States District Court, Western District of Washington. National Surety Co. vs. Blaumauer et al. Defendants' Exhibit "F." Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

No. 2967. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendant's Exhibit "F." Filed Apr. 5, 1917. F. D. Monckton, Clerk.

Petition for Writ of Error and Supersedeas by Plaintiff.

National Surety Company, plaintiff in the above-entitled action, feeling itself aggrieved by the judgment entered in this cause on the 5th day of February, A. D. 1917, comes now by its attorneys and petitions this court for an order allowing said plaintiff to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which the plaintiff in error, being plaintiff in this court, shall give and furnish upon said writ of error, and that upon giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit; and your petitioner will ever pray.

C. B. WHITE,
JOHN D. FLETCHER,
ROBT. E. EVANS,

Attorneys for Plaintiff in Error, Being Plaintiff
Below.

(Filed Feb. 6, 1917.) [66]

Assignment of Error.

Comes now the plaintiff in the above-entitled action, being also plaintiff in error, and files the fol-

lowing assignment of errors upon which it will rely upon its prosecution of a writ of error in the above-entitled cause. That the Court erred as follows:

I.

In refusing to allow witness Allen to answer the following question (p. 9, Bill of Exceptions):

“Q. I will ask you, Mr. Allen, what was the purpose of obtaining the release of that first bond?”

II.

In refusing to allow witness Allen to answer the following question (p. 9, Bill of Exceptions):

“Q. I will ask you, Mr. Allen, if between the expiration of the first bond of June 22d, 1911, and the coming into effect of the bond of June 22d, 1914, was there any intervening period at which time the National Surety Company would not have been bound?”

III.

In refusing to allow plaintiff to show that the bond of June 22d, 1914, was a substitution for the bond of June 22, 1911. (See page 9, Bill of Exceptions).

IV.

In refusing to allow plaintiff to show that it is the universal rule to require an application from the applicant for a depository bond. (See p. 11, Bill of Exceptions).

V.

In permitting in evidence Defendants' Exhibit “E.” (P. 18, Bill of Exceptions). [67]

VI.

In admitting in evidence Defendants' Exhibit “F” (See page 18, Bill of Exceptions).

VII.

In sustaining defendants' motion for nonsuit and

dismissal of plaintiff's action, interposed when plaintiff rested its case, said motion reading as follows (Page 20, Bill of Exceptions):

"Mr. PETERSON.—If the Court please, the defendants at this time jointly and severally move the court for a judgment of nonsuit and dismissal of plaintiff's action and for costs on the ground and for the reason that the plaintiff has failed to establish a cause of action against the defendants or either of them, and for the further reason and upon the further ground that the proofs offered by plaintiff show affirmatively that it is not entitled to recover against the defendants or either of them."

VIII.

In discharging the jury from further considering the case (See page 24, Bill of Exceptions).

IX.

In entering judgment in favor of defendants and against plaintiff dismissing this action and for costs against the plaintiff, said judgment being entered February 5th, 1917.

WHEREFORE said plaintiff in error, being plaintiff below, prays that judgment of said court be reversed, and that said District Court be directed to enter a judgment herein in favor of plaintiff and against the defendants and each of them for the sum of \$4,327.87, with 6% thereon from December 30th, 1914, less \$855.82 paid as dividend April 21st, 1915, together with the further sum of \$14.00 expenses in investigating liability, together with plaintiff's costs and disbursements, or, if such judgment is [68] not proper, then that said District Court be directed to grant a new trial of this cause and proceed with

this action in the trial of the same.

C. B. WHITE,

JOHN D. FLETCHER,

ROBT. E. EVANS,

Attorneys for Plaintiff in Error, Being Plaintiff
Below.

(Filed Feb. 6, 1917.) [69]

**Order Allowing Writ of Error and Fixing Amount
of Bond.**

On motion of John D. Fletcher, Esq., one of the attorneys for plaintiff and upon filing the petition for writ of error, and an assignment of error, and upon due notice to defendants and their attorneys it is by the Court

ORDERED that a writ of error be and is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered herein on February 5th, 1917, and that the amount of the bond on said writ of error be and hereby is fixed at \$500.00, and upon the giving of such security all further proceedings of this court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 5th day of March, A. D.
1917.

EDWARD E. CUSHMAN,

District Judge.

(Filed March 5, 1917.) [70]

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS that we, National Surety Company, a corporation as principal, and Globe Indemnity Company, a corp., as surety, are held and firmly bound unto Isaac Blumauer, W. Dean Hays and Ora J. Hays, his wife, T. F. Mentzer and Elizabeth E. Mentzer, his wife, A. D. Campbell and Jessie E. Campbell, his wife, David Copping and Eva Copping, his wife, defendants above named, and to each of them, in the sum of \$500.00 to be paid them and each of them, their executors and administrators, for which payment well and truly to be made, we bind ourselves and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated this 7th day of March, A. D. 1917.

WHEREAS the National Surety Company, the above-named principal, has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause by the District Court of the United States for the Western District of Washington, rendered and entered on February 5th, 1917.

NOW THEREFORE the condition of this obligation is such that if the above-named plaintiff National Surety Company, principal in this bond, shall prosecute said writ to effect and answer all costs and damages if it shall fail to make good its plea, then

this obligation shall be void; otherwise to remain in full force and virtue.

[Corporate Seal of National Surety Company].

NATIONAL SURETY COMPANY,

By C. B. WHITE,

Its General Attorney.

[Corporate Seal of Globe Indemnity Company].

GLOBE INDEMNITY COMPANY,

By L. N. BREWER,

Attorney in Fact. [71]

By H. J. RAMSEY,

Attorney in Fact.

Attest: C. E. McLAIN.

The above bond and sufficiency of surety upon the same are hereby approved this 8th day of March, A. D. 1917.

EDWARD E. CUSHMAN,

District Judge.

(Filed March 8, 1917.) [72]

Stipulation Regarding Transcript of Record.

IT IS HEREBY STIPULATED by and between the respective parties that the transcript made by the Clerk of this Court for the Circuit Court of Appeals for the Ninth Circuit, may have omitted therefrom the following:

1. The original complaint.
2. The original and first amended answer of defendants T. F. Mentzer and Elizabeth E. Mentzer, his wife, and David Copping and Eva Copping his wife, to the Complaint and the first amended answer to the amended complaint and the motions and demurrers to the answers and the orders thereon.

3. All captions except to the amended complaint.

4. All endorsements, file marks, verifications and acceptances of service on the pleadings, stipulations and orders.

C. B. WHITE,

JNO. D. FLETCHER,

ROBERT E. EVANS,

Attorneys for Plaintiff in Error.

TROY & STURDEVANT,

BATES & PETERSON,

Attorneys for Defendants in Error.

(Filed March 8, 1917.) [73]

Stipulation as to Original Exhibits.

IT IS HEREBY STIPULATED between the respective parties to this action, that the original exhibits introduced in evidence in the court below, may be attached by the Clerk of this Court to the bill of exceptions and transmitted to the Circuit Court of Appeals for the Ninth Circuit, in lieu of copies, and that the Judge who tried this cause may make an order to that effect.

C. B. WHITE,

JOHN D. FLETCHER,

ROBERT E. EVANS,

Attorneys for Plaintiff in Error.

TROY & STURDEVANT,

BATES & PETERSON,

Attorneys for Defendants in Error.

(Filed March 8, 1917.) [74]

**Order Directing Original Exhibits Instead of
Copies to be Forwarded to Circuit Court of
Appeals.**

NOW ON THIS 8th day of March, A. D. 1917,
on stipulation of the respective parties through their
attorneys,

IT IS HEREBY ORDERED that the clerk of
this court do attach the original exhibits introduced
in evidence in the trial of his cause to the bill of ex-
ceptions and transmit them to the United States Cir-
cuit Court of Appeals for the Ninth Circuit in lieu
of copies.

EDWARD E. CUSHMAN,
Judge.

(Filed March 8, 1917.) [75]

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, clerk of the United States
District Court for the Western District of Washing-
ton, do hereby certify and return that the foregoing
is a true and correct copy of the record and pro-
ceedings in the case of National Surety Company,
plaintiff, versus Isaac Blumauer, W. Dean Hays
and Ora J. Hays, his wife, T. F. Mentzer and
Elizabeth E. Mentzer, his wife, A. D. Campbell and
Jessie E. Campbell, his wife, David Copping and
Eva Copping, his wife, defendants, as required by
praecipe of Counsel filed and shown herein, and as
the originals thereof appear on file and of record

in my office in said District at Tacoma; and that the same constitute my return on the annexed Writ of Error herein.

I further certify and return that I hereto attach and herewith transmit the original writ of error and original citation together with original stipulation of counsel as to printing record; and that I am transmitting herewith, duly certified and attached to the bill of exceptions herein, the original exhibits called for in stipulation of counsel and order of Court for transmission of the same to the Circuit Court of Appeals.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges as incurred and paid in my office by and on behalf of the plaintiff in error herein, for making record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [76]

Clerk's fees (Sec. 828 R. S. U. S.) for making	
record, certificate and return, 186 folios at	
15¢ each	\$27.90
Certificate of Clerk to Transcript, 3 folios at	
15¢ each, and Seal65
Certificate of Clerk to original exhibits, 3	
folios at 15¢ each, and Seal.....	.65

Attest my hand and the seal of said District Court at Tacoma, in said District, this 31st day of March, A. D. 1917.

[Seal]

FRANK L. CROSBY,
Clerk.

By F. M. Harshberger,
Deputy Clerk. [77]

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

No. —

NATIONAL SURETY COMPANY, a Corporation,
Plaintiff in Error,

vs.

ISAAC BLUMAUER, W. DEAN HAYS and ORA
HAYS, His Wife, T. F. MENTZER and
ELIZABETH E. MENTZER, His Wife, A.
D. CAMPBELL and JESSIE E. CAMP-
BELL, His Wife, and DAVID COPPING
and EVA COPPING, His Wife,
Defendants in Error.

Writ of Error.

United States of America.

The President of the United States of America, to
the District Court of the United States for the
Western District of Washington, Southern Di-
vision, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment before you, between
said National Surety Company, plaintiff below and
plaintiff in error, and Isaac Blumauer, W. Dean
Hays and Ora Hays, his wife, T. F. Mentzer and
Elizabeth E. Mentzer, his wife, A. D. Campbell
and Jessie E. Campbell, his wife, and David Cop-
ping and Eva Copping, his wife, defendants below
and defendants in error, a manifest error hath
happened to the damage of said National Surety
Company, we being willing that such error, if any

hath happened, should be duly corrected, and full and speedy justice done to the plaintiff in error aforesaid, on this behalf do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, at the Courtrooms of such Court in the city of San Francisco, State of California, together with this writ, so that you have the same at said place before the Justices aforesaid on thirty days from the date of this writ. That the record and proceedings aforesaid being inspected, said justices of said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 8th day of March A. D. 1917.

[Seal]

FRANK L. CROSBY,
Clerk of the District Court of the United States for
the Western District of Washington,

By F. M. Harshberger,
Deputy Clerk.

The foregoing writ is hereby allowed this 8th day of March A. D. 1917.

EDWARD E. CUSHMAN,
Judge.

Service of the foregoing writ is hereby acknowl-

edged by receipt of copy of same, this 8th day of March, A. D. 1917.

TROY & STURTEVANT,
BATES & PETERSON,
Attorneys for Defendants in Error.

[Endorsed]: No. ————. In the United States Circuit Court of Appeals for the Ninth Circuit. National Surety Company, a Corporation, Plaintiff in Error, vs. Isaac Blumauer et al., Defendants in Error. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Mar. 8, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

No. ———

NATIONAL SURETY COMPANY, a Corporation,
Plaintiff in Error,
vs.

ISAAC BLUMAUER, W. DEAN HAYS and ORA
HAYS, His Wife, T. F. MENTZER, His
Wife, A. D. CAMPBELL and JESSIE E.
CAMPBELL, His Wife, and DAVID COP-
PING and EVA COPPING, His Wife,
Defendants in Error.

Citation on Writ of Error.

United States of America.

The President of the United States of America to
Isaac Blumauer, W. Dean Hays and Ora Hays,
His Wife, T. F. Mentzer and Elizabeth E. Ment-
zer, His Wife, A. D. Campbell and Jessie E.
Campbell, His Wife, and David Copping and
Eva Copping, His Wife, Defendants in Error,
Greeting:

You are hereby cited and admonished to be and
appear at the United States Circuit Court of Ap-
peals for the Ninth Circuit, within thirty (30) days
from the date hereof, pursuant to the writ of error
filed in the clerk's office of the United States District
Court for the Western District of Washington,
Southern Division, wherein the National Surety
Company, a corporation is plaintiff in error and you
are the defendants in error, and show cause if any
there be, why the judgment rendered against said
plaintiff in error as in said writ of error mentioned
should not be corrected, and why speedy justice
should not be done to the parties in that behalf.

WITNESS The Honorable EDWARD D.
WHITE, Chief Justice of the United States, this
8th day of March A. D. 1917.

[Seal] EDWARD E. CUSHMAN,
District Judge.

Service of the foregoing citation by receipt of copy
thereof admitted this 8th day of March A. D. 1917.

TROY & STURDEVANT,
BATES & PETERSON,
Attorneys for Defendants in Error.

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit. National Surety Company, a Corporation, Plaintiff in Error, vs. Isaac Blumauer et al., Defendants in Error. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Mar. 8, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

No. —.

NATIONAL SURETY COMPANY, a Corporation,
Plaintiff,

vs.

ISAAC BLUMAUER et al.,
Defendants.

Stipulation as to Printing Record.

IT IS STIPULATED by and between the respective parties, that the clerk of the above-named court may, in printing the record, eliminate therefrom the following:

1. The original complaint.
2. The original and first amended answer of defendants T. F. Mentzer and Elizabeth E. Mentzer David Copping and Eva Copping to the complaint and the first amended answer to the amended complaint and the motions and demurrers to the answers and the orders thereon.
3. All captions, except to the amended complaint.

4. All endorsements, file-marks, verifications and acceptances of service on the pleadings, stipulations and orders.

5. Exhibit 18, being copy of minutes of trustees' and stockholders' meeting of State Bank of Tenino.

C. B. WHITE,

JOHN D. FLETCHER,

ROBERT E. EVANS,

Attorneys for Plaintiff in Error.

TROY & STURDEVANT,

BATES & PETERSON,

Attorneys for Defendants in Error.

[Endorsed]: No. 1783. In the United States Circuit Court of Appeals for the Ninth Circuit. National Surety Company, Plaintiff, vs. Isaac Blumauer, et al., Defendants. Stipulation as to Printing Record. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Mar. 8, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

[Endorsed]: No. 2967. United States Circuit Court of Appeals for the Ninth Circuit. National Surety Company, a Corporation, Plaintiff in Error, vs. Isaac Blumauer, W. Dean Hays and Ora J. Hays, His Wife, T. F. Mentzer and Elizabeth E. Mentzer, His Wife, A. D. Campbell and Jessie E. Campbell, His Wife, David Copping and Eva Copping, His Wife, Defendants in Error. Transcript of Record. Upon Writ of Error to the United

States District Court of the Western District of
Washington, Southern Division.

Filed April 5, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.